DOCUMENT RESUME

ED 330 168 EC 300 140

AUTHOR	Bazron, Barbara J.
TITLE	The Minority Severely Emotionally Disturbed Child: Considerations for Special Education and Mental Health Services. A Task Force Report.
INSTITUTION	Georgetown Univ. Child Development Center, Washington, DC. CASSP Technical Assistance Center.
SPONS AGENCY	National Inst. of Mental Health (DHHS), Rockville, MD. Child and Adolescent Service System Program.
PUB DATE	Feb 89
NOTE	108p.
AVAILABLE FROM	CASSP Technical Assistance Center, Georgetown University Child Development Center, 3800 Reservoir Rd., N.W., Washington, DC 20007 ($7.50).
PUB TYPE	Reports - Descriptive (141) -- Guides - Non-Classroom Use (055) -- Viewpoints (Opinion/Position Papers, Essays, etc.) (120)
EDRS PRICE	MF01/PC05 Plus Postage.
DESCRIPTORS	Advocacy; *Delivery Systems; Elementary Secondary Education; *Emotional Disturbances; Federal Legislation; Financial Support; *Mental Health Programs; *Minority Groups; Policy Formation; Program Development; Research Needs; Severe Disabilities; Special Education; Training
IDENTIFIERS	Education of the Handicapped Act Amendments 1986

ABSTRACT

This discussion of special education and mental health services for minority severely emotionally disturbed children identifies several issues in service delivery and impediments to service delivery. The identified issues are divided into the following categories: program development, the coordination of services, and service delivery systems; funding; research; education and training; and policy development and advocacy. Each of these issue areas is described, and strategies are proposed. The report also contains several appendixes: (1) a paper by Mareasa Isaacs titled "An Overview of the Provision of Mental Health Services to Severely Emotionally Disturbed Children and Their Families"; (2) selected federal legislation and case law related to the education of minority children who are severely emotionally disturbed; (3) a description of the federal early intervention program under Public Law 99-457; (4) an analysis and overview of Public Law 99-457 by Barbara J. Smith; (5) the text of the Education of the Handicapped Act; and (6) an 18-item bibliography. (JDD)

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THE MINORITY SEVERELY EMOTIONALLY DISTURBED CHILD: CONSIDERATIONS FOR SPECIAL EDUCATION AND MENTAL HEALTH SERVICES

A TASK FORCE REPORT

February, 1989

EC 300140

CASSP Technical Assistance Center
Georgetown University Child Development Center

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THE MINORITY SEVERELY EMOTIONALLY DISTURBED CHILD:

CONSIDERATIONS FOR SPECIAL EDUCATION AND MENTAL HEALTH SERVICES

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March, 1989

This report is funded by the National Institute of Mental Health,
Child and Adolescent Service System Program (CASSP)

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ACKNOWLEDGEMENTS

This Task Force Report on the Minority Severely Emotionally Disturbed Child (SED): Considerations for Special Education and Mental Health Services was made possible through the leadership of Barbara J. Bazron, Ph.D., who not only chaired the Task Force which generated the recommendations contained in the report, but who also authored the report itself. Special thanks goes out to Mareasa R. Isaacs, Ph.D., who was a major participant on the Task Force and who also provided consultation to the Child and Adolescent Service System Program (CASSP) Technical Assistance Center in planning for this meeting of special educators and mental health professionals (see Appendix A for a listing of Task Force members). Appreciation is extended to each of the Task Force members, who are also minority group members, for their participation and contributions to the field by sharing their insights, experiences, and expertise. These contributions are the centerpiece of this report.

Additionally, a debt of gratitude is owed to Ira Lourie, M.D., Director, and Judy Katz-Leavy, M.Ed., Assistant Director, of the Child and Family Support Branch, National Institute of Mental Health, and to Roxane Kaufmann, Project Coordinator, CASSP Technical Assistance Center, who from the very beginning emphasized the importance of the linkages between mental health and special education in order to better serve children who are severely emotionally disturbed. Finally, thanks is extended to Kathleen McGhee of our CASSP staff for providing editorial assistance.

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INTRODUCTION

Over the past several years, the Child and Adolescent Service System Program (CASSP) Technical Assistance Center of the Georgetown University Child Development Center has sponsored a series of meetings that have brought professionals from mental health, special education, juvenile justice, health and maternal and infant care together to discuss issues related to the provision of services for severely emotionally disturbed (SED) children and youth. As a result of these meetings, a continuum of care model has been designed which describes the range of services that should be available in the community; a working definition of "severely emotionally disturbed children and youth" has been developed; and the barriers that often preclude the delivery of appropriate, essential services to this population have been identified.

What is apparent, based upon the many discussions that have taken place at these meetings, is that no one system or agency can provide all of the services needed by seriously emotionally disturbed children and their families. Good interagency and interdisciplinary planning must occur at the community, local, state, and federal level if these children are to receive appropriate services. A model for cost sharing and a paradigm for providing coordinated services through a well-defined case management system is essential if the needs of this population are to be met.

Minority children and their families are among the most poorly served within this population. This group has generally had limited access to appropriate services because of institutional racism, the strain of acculturation, language/communications problems, geographic isolation and resource poor environments, cultural conflicts with the service delivery model generally used in this country, and socio-economic factors that impact upon daily survival (Isaacs, 1986).

These children either receive services in the most restrictive environment or receive no services at all. The literature has shown that black and hispanic children are more likely than white children to be placed in correctional institutions rather than in psychiatric hospitals even when they evidence identical behavior manifestations of their illness (Smith). Black children are also more likely to be placed in separate special educational facilities than white children. Asian children receive little or no services because of their cultural orientation toward mental health services.

The unique characteristics of minority populations must be considered if they are to receive appropriate services. Service delivery systems must be sensitive to the external and internal factors (Isaacs, 1986) that limit, or in some instances, preclude Blacks, Hispanics, Asians, Native Americans and other minority groups from receiving appropriate mental health care.

The National Institute of Mental Health (NIMH), through the CASSP Technical Assistance Center, convened a meeting of special educators and mental health professionals who are minority group members to develop strategies for delivering appropriate services to SED minority children and youth and their families. Held between March 2 - 4, 1987, this meeting was convened to enhance and maximize the understanding of mental health and special education professionals of appropriate strategies for the delivery of mental health services to minority emotionally disturbed children in public schools. In order to accomplish this goal, several objectives were addressed, which included:

1. Enhancing collaboration between mental health agencies and providers and public/private school personnel.

2. Sensitizing school personnel and mental health providers to the diverse cultural and social factors affecting minority populations.

3. Reducing the stigma inflicted by persons in the community which affects minority emotionally disturbed children and adolescents.

4. Increasing the awareness between mental health and education systems of each other's mandated responsibilities and services.

The basic premise for this meeting was that the children and families within this population have multiple needs that cannot be provided by any one system or agency. Therefore, interagency and interdisciplinary planning must occur if these children are to receive appropriate services.

It must be emphasized that the focus of this meeting was to develop strategies and not to identify issues or impediments to service delivery. It was felt that the issues had already been clearly identified at prior conferences. A brief description of these issues is contained within this document.

Since the participants were from either mental health or special education, it was necessary to present some information that would give the group a common framework from which to work. For this reason, Dr. Mareasa Isaacs, former New York Associate Commissioner for Children and Youth, was asked to give an overview of the services provided to minority SED children and families by the mental health system and a description of any laws or regulations that govern service delivery. Dr. Barbara J. Bazron presented similar information related to special education. A summary of these presentations can be found in Appendixes B and C of this document.

OVERVIEW OF ISSUES AND IMPEDIMENTS TO SERVICE DELIVERY

There is agreement among mental health and special education professionals that seriously emotionally disturbed minority children and youth require a myriad of services if they are to become functional members of society. These services must address both emotional and cognitive aspects of the child's development. The unique cultural variations that exist among subgroups, as well as those factors common to all members of a minority group, must be considered.

The participants in this conference reviewed the issues of and impediments to service delivery to minority children and youth that had been identified in former meetings. The identified issues were divided into the following five categories:

1. Program Development, the Coordination of Services and Service Delivery Systems;
2. Funding;
3. Research;
4. Education and Training; and
5. Policy Development and Advocacy.

Each of these broad categories was discussed in both large and small group sessions. Specific strategies for addressing these issues were developed. These topics overlapped in some cases. It was interesting to note that in these instances there was a great deal of similarity in the responses of the groups. The results of this effort are described below.

PROGRAM DEVELOPMENT, THE COORDINATION OF SERVICES AND SERVICE DELIVERY SYSTEMS

Description of the Problem

Many areas of the country, with significant minority populations, lack programs developed to address the unique needs of minority emotionally disturbed children. In these areas, children remain underserved or not served at all.

PROGRAM FUNDING

Description of Problem

Funding streams are driven by the manner in which the target population is defined by the funding source and the limitations posed by the legislation/regulations that govern the definition of reimbursable services. In most instances, there is an absence of provisions for jointly-funded or blended programs. Lack of funding is often given as the reason why services are not available to severely emotionally disturbed children and their families. A brief description of the funding mechanism used by both special education and mental health can be found below.

FUNDING OF SPECIAL EDUCATION

Special Education programs receive most of their funding from local school district budgets for basic education services; from entitlement funds that cover the excess cost related to the provision of services to handicapped children that are generated through P.L. 94-142, The Education for All Handicapped Children's Act of 1975 (as Amended by P.L. 98-199) and P.L. 99-457, The Education of the Handicapped Amendments of 1986; and from the financial assistance provided by the Education and Consolidation Act of 1981, P.L. 89-313, for the improvement of basic skills and career preparation for handicapped, delinquent, and migratory students, and adults lacking basic skills.

P.L. 94-142

P.L. 94-142 mandates a free and appropriate education for all handicapped children, at no cost to the parents/guardians. The term "handicapped" includes seriously emotionally disturbed minority children. The law provides funds to cover the excess cost of educating these children. Each state receives an entitlement grant based upon the number of handicapped children served. In fiscal year 1987, the states received $212.00 per child. Seventy-five percent of such funds are distributed to the Local Education Agency (LEA) on a per child count basis. These funds are commonly referred to as "flow through" funds. Twenty-five per cent of these funds remain at the State Education Agency (SEA) level. Five percent of these funds are for Administrative costs and twenty percent are discretionary funds. Frequently states accept competitive grants from LEAs for use of these funds.

P.L. 94-142 funds can only be used to cover educational costs and specified related services. "Related services" are defined in the law as "...transportation, and such developmental, corrective, and other support services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services), except that such medical services shall be for diagnostic and evaluation purposes only, as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children..." According to this definition, costs related to residential placement or on-going psychiatric care are not allowable expenditures.

Many advocates have argued that psychotherapy is an indispensably related service for seriously emotionally disturbed children and youth. Without this service, it is extremely difficult for children and youth to benefit from the individualized education program mandated by the law. Advocates have also pointed out that "counseling services" are listed as fundable, related services and the difference between "counseling" and "therapy" is essentially one of semantics. The distinction between "counseling" and "therapy" has been hotly debated. This issue has repeatedly been tested in the courts on behalf of seriously emotionally disturbed children. In McKenzie v. Jefferson, 9566 F. Supp 404, 1983, the question of whether District of Columbia public schools had to pay for the psychiatric hospitalization of a seriously emotionally disturbed teenager was heard. The court ruled that psychiatric hospitalization does not fit the definition of special education and therefore cannot be considered a related special education service. The court further ruled that psychiatric hospitalization was a medical service which must be provided by medical doctors. Based upon this decision, and similar instances in other states, on-going therapy has been excluded as a service provided under this law. It should be noted that psychiatric evaluations completed for diagnostic purposes are an allowable cost.

P.L. 94-142 does provide funds for a variety of indirect services. They are:

1. Comprehensive System of Personnel Development: These grants are designed to provide pre-service and inservice training for general, special education, and support personnel who serve handicapped children. Private, nonprofit organizations can also receive funds for activities related to the provision of training and information to parents of handicapped children and volunteers who work with parents to help them participate more effectively with professionals in meeting the needs of their children. A variety of training activities could be provided to mental health personnel through the provisions of this subsection.

2. Research and Demonstration Projects: These projects must be related to the following:

   a. The development of new and improved techniques and devices for teaching handicapped children and youth;
   b. The development of curricula;
   c. The application of new technologies and knowledge for the purpose of improving instruction;
   d. The development of program models and exemplary practices in the area of special education. This subsection also has provisions for the funding of longitudinal studies that address the effect of the law on a specific sample of children such as emotionally disturbed minority children. The development of a data base on the number of children served within each category of exceptionality is also targeted as an
   e. The dissemination of information on research and related activities.

3. Instructional Media and Materials Centers: The purpose of these centers is to facilitate the use of new educational technology which includes designing, developing, and adapting instructional materials for the handicapped.

4. Secondary Education and Transitional Services for Handicapped Youth: This subsection provides services for children ages 12 and above. The specific services provided are:

   a. Vocational services;
   b. Postsecondary education;
   c. Competitive employment training; and
   d. Programs that assist youths in making the transition to independent living.

P.L. 99-457

Title I of this act provides 50 million dollars for FY 87 and 75 million dollars for FY 88 for services to handicapped infants and toddlers, birth to age 2. Family training, counseling and home visits, case management services, psychological services, medical services for diagnostic or evaluation purposes, other related services, and special instruction are included.

Title II of this act provides funding for special education and related services for handicapped children ages 3 to 5. Funding is dependent upon the number of children served by the State Education Agency (SEA). The entitlement based upon the December 1 child count is:

$300 per year per child in FY 87
$400 per year per child in FY 88
$500 per year per child in FY 89
$1,000 per year per child in FY 90

One of the outstanding features of this bill is the requirement that policies and procedures for interagency agreements be developed that provide services to handicapped children, birth to five years of age. These agreements must include statements that define the agency's financial responsibility for early intervention services.

P.L. 89-313

This Act provides financial assistance for the purpose of "...improving educational achievement, especially in basic skills and career preparation..." Entitlement funds represent 87 percent of the SEA's allotment, 12 percent are used for support grants of direct state services, and 2 percent are used for administrative costs. In FY 87, the local education agencies were allotted $670 per child in the State of Pennsylvania.

This grant represents a real opportunity for interagency planning and programming since it is one of the few funding sources that addresses the needs of several distinct populations. Students in state-operated schools for the handicapped, neglected and delinquent youth, those in correctional institutions, migratory students, and adults lacking basic skills are eligible for funding under P.L. 89-313.

Specific allowable project activities are:

1. Employment of additional staff;
2. Development or acquisition of curriculum, methods, practices, materials, and equipment;
3. Inservice training;
4. Exemplary educational activities;
5. Community relations activities;
6. Repairs or minor remodeling of facilities;

7. Incentives for superior teaching and school performance;
8. Developmental, corrective and other support services, including counseling services; and
9. Planning, evaluation, and dissemination of information.

Several reasons were identified for this absence of appropriate programs:

- There are very few minority professionals in decision-making and/or policymaking positions in special education and mental health. These positions include the State Director of Special Education, Secretary of Education, Commissioner of Mental Health, Director of the Intermediate Unit, and State Directors of Mental Health Services for Children.

- Program development has stagnated because there is a lack of clarity regarding how to proceed. Minority professionals are needed to advise mental health administrators on how to service minority children.

- Programs in existence are often inaccessible because of their location. There is a need for community- or neighborhood-based as well as agency-based programs.

- Staff members do not have the training necessary to provide appropriate services to minority children and their families. "Appropriate services" are defined as those that take into consideration the unique characteristics of the culture such as, but not limited to, cultural values, patterns of communication, language, morality and learning style, level of acculturation, and the impact the environment has on the individual.

- A continuum of services is necessary to address the multiple needs of this population. Most communities are extremely limited in what can be offered. This is particularly true in rural communities.

- As stated earlier, many minority group members have limited access to appropriate services because of institutional racism, the strain of acculturation, language/communication differences, poverty, and other socio-economic factors that impact upon daily survival (Isaacs, p. 2-4).

Discussion

Minority severely emotionally disturbed children must have access to a "System of Care" if they are to become successful, contributing members of society. The "System of Care" concept, as defined by NIMH, is

> "...a comprehensive spectrum of mental health and other necessary services which are organized into a coordinated network to meet the multiple and changing needs of severely emotionally disturbed children and adolescents." (Stroul, B. and Friedman, R., p.3).

The components of the system of care are:

- mental health services
- social services
- educational services
- health services
- vocational services
- recreational services
- operational services

This concept emphasizes the multiple needs of severely emotionally disturbed children and the importance of establishing effective linkages with all systems delivering services to this population. Model programs designed to serve severely emotionally disturbed children and their families should adhere to the system of care concept. The continuum of care needed for minority children and their families is not unlike what is needed for non-minority children. Unfortunately, many minority children are in programs that do not work for anyone. As one conceptualizes a model program for this population, one should think about how a good program should be implemented differently to accommodate the unique needs of minorities rather than attempting to create a "new" kind of program.

It should also be recognized that there is no one model appropriate for all children and their families. Intergroup as well as intragroup differences exist among members of minority populations.

The following specific factors should be considered when developing programs for minority SED children and their families:

Importance of Case Management, Coordination of Services, and the Development of Linkages with Resources Within the Community

Case management is an essential component of any good program. Professionals must take on the responsibility of coordinating service delivery to insure that the child and family receive the comprehensive services they need. This also prevents the family from being caught between two or more different agencies giving them different advice.

It is important that someone knowledgeable about the specific services available within the other systems and how those services can be accessed be available to the family. It is of particular importance for the service provider to have knowledge of free or reduced cost services. As linkages with service providers in the community are formed, those agencies and organizations within the community that may not routinely be included, such as the church and indigenous healers or other informal support systems within the community, must not be overlooked.

Sensitivity to Cultural Differences and Their Impact Upon Appropriate Service Delivery

Programs must be multicultural in their thrust and must emphasize the similarities and differences between minorities and other segments of society. A training component should be built into the program that makes service providers aware of the culturally-defined patterns of communication, language, values, morality, sense of community and family, and learning style. Other issues related to the development and implementation of training programs are addressed elsewhere.

Staffing Pattern

Minority professionals should be employed to work with minority children and families. Minorities often prefer professionals from their culture over white professionals. One of the reasons for this is that non-minority service-providers may be perceived as having insufficient knowledge of the social and economic realities those they serve face.

In instances in which minority professionals are not available, non-minority professionals must receive some cultural sensitivity training so they are prepared to serve the needs of this population.

Accessibility of Services

Often severely emotionally disturbed minority children and their families "fall between the cracks" of the service delivery system because they are unable to access services. It is not uncommon for children to be placed in school programs designed to meet their unique social/emotional needs but then remain unknown to other service providers, such as mental health. One of the reasons for this may be that families are hesitant to deal with administrators and direct service mental health staff because they have not had successful experiences with them in the past. In many cases their only experience may have been running from one agency location to another without getting assistance. This is also true of the experiences many parents report regarding the educational system.

There is also a stigma attached to the receipt of mental health services or any specialized services, including education, among members of various minority groups. Program developers must be sensitive to this if minority severely emotionally disturbed children and their families are to receive the benefits of these services. Sometimes the location in which the service is delivered makes a difference. In many instances families are more receptive to mental health programs when they are offered in schools or churches.

Many minority groups have well-defined informal and formal systems for providing mental health services to their members. For example, among American Indians, the tribal healer serves this purpose; among the Hispanic population, the church and the family provide this support; and among the Asian population, the family provides this support. The church and other members of the black community have served the role of counselor and help-mate to black people historically. There is a need for mental health systems to interface with these informal supports. This is important because the minister or other community-based provider may not have the skills necessary to identify or provide appropriate therapeutic interventions to individuals who evidence serious emotional disturbances.

Programs designed to serve this population should have specific policies and procedures to insure that the child and his/her family receive help negotiating the administrative maze through which services are obtained, both within the agency and outside of the agency. This may mean:

- accompanying parents and children to appointments;
- making advance calls to service providers outside of the program to make sure they are ready to receive the family;
- providing several services in one location;

- providing transportation; and
- providing home-based as well as on-site services.

Parent Involvement

Families should be involved in all aspects of the program designed for severely emotionally disturbed children. Great emphasis is placed on kinship and the extended family in most minority communities. Therefore, significant persons, such as grandparents, aunts and uncles, and close friends who represent the family's natural support system, should also have an opportunity to be involved in the treatment process.

Outreach services are necessary if one is to engage parents in the program. Often they will not come to the program site because of the lack of financial resources or resistance to institutions and agencies of any kind.

The importance of community can not be overlooked during program planning. Support groups and other methods of networking parents with other parents should be considered. Funding for both special education and mental health is limited. Creative planning by administrators is necessary if the resources of these two funding sources are to be blended to support programs for minority emotionally disturbed children.

Recommendations

The Mental Health/Special Education Task Force made the following recommendations for program development:

- Mental health and special education must have a vehicle to refer children easily from one system to another. This may result in earlier identification of "at risk" children. This will allow them to receive preventive and less intensive service rather than being initially identified at the point at which the most restrictive and intensive treatment is required.

- Model mental health and special education programs that address the needs of minority populations should be identified. Information on these programs should be disseminated so they can be replicated in other areas of the country. Funding for this effort should be secured through NIMH and the Department of Education.

- A "Best Practices" document, which describes specific techniques and strategies currently being employed in the field, should be developed. This document should include information on blended funded programs, methods of providing a continuum of care in rural areas, and specific examples of programs that address the various components of the System of Care as defined by NIMH.

- CASSP should mandate that projects show evidence of attempts to coordinate mental health and special education services at both the local and state level to address the needs of severely emotionally disturbed minority children.

- Requests for Proposals (RFPs) should be written to stimulate the development of minority program providers. Technical assistance should also be made available to these programs.

- Teams composed of mental health and special education providers should make visits to programs throughout the country in order to learn more about each others' programs. This will increase the probability of interagency and interdisciplinary collaboration and cooperation.

- A pool of consultants and other resources should be assembled for use by program developers.

- Programs should contain a multicultural education component that emphasizes the similarities and differences among groups. This should be available to those rendering and those receiving services.

- Current special education and mental health legislation should be reviewed to determine the specific barriers they present to service delivery, particularly cooperative efforts.

- A survey should be made of all states to identify minority special education and mental health professionals who are in key decision-making positions. These people should be enlisted to act as change agents on behalf of severely emotionally disturbed minority children and their parents. This group could make programmatic decisions that result in the inclusion of minorities in the service delivery system.

RESEARCH

Description of the Problem

There is limited research available that addresses the issues related to the delivery of appropriate services to severely emotionally disturbed children and their families. Much of the research available has limited generalizability because of the different manner in which this population has been defined in various research efforts.

Although there are many effective programs being implemented throughout the country, information on most of these programs cannot be found in the literature. This is unfortunate since many of these programs are innovative and utilize non-traditional approaches to service delivery.

The lack of research has limited the ability of service providers to replicate successful programs or avoid the pitfalls of less successful ones. Thus, in most instances, professionals have had to develop programs without the benefit of the complete body of knowledge already available in the field.

The Mental Health/Special Education Task Force supported the contention that data collected through research efforts must be utilized as the underpinnings of successful, appropriate programs and service delivery systems for this population. The Task Force also identified several specific topics that should be targeted for research. They are:

- The development of culturally sensitive assessment devices.
- The collection of statistical data related to this population.
- Continued research and evaluation of effective minority programs and service delivery models designed for the severely emotionally disturbed minority child and adolescent.
- The development of standardized definitions of this population that can be used across systems.
- Research designed to identify and evaluate innovative and non-traditional approaches for serving this population.
- Strategies for developing linkages between special education and mental health systems.

- The documentation of pre-service and in-service personnel preparation and training programs throughout the country that contain a component that addresses cultural differences.

Discussion

One of the most pressing issues discussed during this conference was the lack of statistical data on minority severely emotionally disturbed children and their families. Much of the basic information needed to establish a data base on this population is extremely limited, if available at all. Statistical information related to the number of children and adolescents from diverse cultural backgrounds who currently fall within the category called "minority severely emotionally disturbed children and adolescents" is difficult to find.

The available data is difficult to interpret or utilize because of the wide array of definitions used to classify these children. Although most definitions utilize variables such as age, emotional, social and behavioral characteristics, and the duration of the child's illness to determine whether the child is severely emotionally disturbed, there is no common definition accepted by the various service-providing agencies that serve this population (Lourie, I. and Katz-Leavy, J., p. 7).

Both educational and mental health systems have definitions used for the inclusion or exclusion of children from services and programs. Public Law 94-142, The Education for All Handicapped Children's Act, defines this population as follows:

> ...(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:
>
> (A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;
> (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
> (C) Inappropriate types of behavior or feelings under normal circumstances;
> (D) A general pervasive mood of unhappiness or depression; or
> (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

> ...(ii) The term includes children who are schizophrenic or autistic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed... (p. 42478). This definition includes all children ages 3-21 years. Most states have adopted definitions consistent with this one for special education classification purposes.

Several definitions, some of which vary to a great degree, are used within the mental health system. Many of these definitions use the diagnostic categories as described in the DSM-III-R to define chronic or severe mental illness. For example, the State of Pennsylvania, Department of Public Welfare, defines seriously mentally ill children as those who can be clinically diagnosed, in accordance with the DSM-III-R. "Children" are defined as severely mentally ill persons below the age of 14. Those persons who are above 14 years of age are treated as adults.

If one compares the definition used by the educational system with the one used by the mental health system, it becomes apparent that differences in criteria, especially with respect to age and the need for a medical diagnosis for inclusion in programs, can make it very difficult for agencies to provide blended service programs. Differences in definition create special problems for minority children and families with multiple needs. These families require the coordinated services of more than one agency within the community if they are to be provided a continuum of care.

The lack of a standardized definition creates barriers that prevent access to programs since the definition used determines whether or not one is eligible for services. A common definition would facilitate interagency planning and service delivery, which is critical for this population.

The issue of definition raised the question of what measures are and will be used to classify minority children and adolescents as severely emotionally disturbed. This question must be considered in two parts: 1) Are available measures appropriate for the evaluation of children? and 2) Are these measures appropriate for the evaluation of minority children?

There is general agreement that measures such as the DSM-III-R are questionable as appropriate classification systems for children. The DSM-III-R categories do not adequately describe mentally ill children. This position was supported by the conference participants. At a 1983 workshop jointly sponsored by the National Institute of Mental Health and the State Mental Health Representatives for Children and Youth of the State Mental Health Program Directors, it was proposed that a diagnostic procedure "...based upon some categorization of social functioning be adopted ...[and that the definition used be]...developed for the types of children to be targeted [for service]..." (Lourie and Katz-Leavy, p. 6). A classification system that reflects this general position would be more responsive and appropriate to the needs of severely emotionally disturbed children than what is currently being used.

The instruments and procedures currently administered to children in general, are, for the most part, even less sensitive to the unique characteristics of minority children. Cultural variability related to differences in communication style, language, value systems, and the degree to which one has assimilated into the majority culture are not considered. For this reason, it is felt that most of these techniques are culturally biased and may result in either over or under classification of children from diverse cultures.

Conference participants were concerned that there is such limited data on the successful programs currently being provided to these children and their families. Compilation and dissemination of information describing the components of these programs, including administrative organization and financing, and the method used to evaluate effectiveness is of primary importance to direct service providers. A body of knowledge that addresses proven strategies for designing "blended funded" programs, those that utilize other innovative and non-traditional approaches and those that address various types of service needs represented within the continuum of care is available in only a piece-meal fashion. An effort to organize and share this data is essential to those in the field.

Recommendations

The Mental Health/Special Education Task Force made the following recommendations for research efforts:

- Demographic data on minority severely emotionally disturbed children should be collected and compiled. It was suggested that the child count data collected on all children receiving services through P.L. 94-142 might represent the best data base available on this population. It is recommended that the Research and Training Centers at Portland State University and at the Florida Mental Health Institute be commissioned to complete this task. The Task Force recognized the enormity of this task but emphasized the critical necessity for its completion as soon as possible.

- Every research effort which includes minority severely emotionally disturbed children and adolescents within its sample should provide a functional definition of the sample population, which includes a description of behavioral, academic and emotional characteristics, and a description of the minority group represented.

- The inclusion of minorities and variables related to minority group membership should be encouraged in all national studies that address issues related to the collection of demographic data.

- Strategies which promote assessor sensitivity to the unique needs of minority populations should be developed and disseminated.

- Research efforts focused on the development of culturally fair/ sensitive instruments and procedures should be encouraged and funded by both mental health and education.

- Research efforts that support programs that illustrate interagency cooperative efforts should be co-funded by education and mental health. This research should focus on day treatment programs since they represent programs in which interagency cooperation currently exists. Information describing the following should be included:

    1. The paradigm used to develop the interagency agreement utilized by the program;
    2. Case management procedures; and
    3. The manner in which the population is defined.

- It was recommended that NIMH direct CASSP to develop monographs on successful programs that contain components that make them culturally sensitive.

- NIMH and CASSP should sponsor minority-developed research.

- A data base of minority project consultants, which could be made available to program developers and state and local agencies, should be developed.

- Lobbying efforts should be undertaken to have minority group members placed on the editorial boards of professional journals. This will support efforts to disseminate information related to research projects that focus on minority issues.

- Outcome data that describe program effectiveness should be collected. This should include the results of both short-term follow-up and longitudinal studies.

TRAINING OF MENTAL HEALTH AND SPECIAL EDUCATION PROFESSIONALS AND PARAPROFESSIONALS

Description of the Problem

The quality indicators of outstanding programs are related to the degree to which the program is organized and effectively administered, the array of services available within the program, and, most importantly, the skills and abilities of staff employed to implement the program. The best planned and administered program will be unsuccessful if it is not supported with qualified and effective direct service staff.

Unfortunately, most professional and paraprofessional training programs do not address the impact of differences in the language, cultural, and socio-economic status of the severely emotionally disturbed child, and his family's ability to access or be receptive to receipt of services provided. Nor do they address methods of providing services within a cultural context. Without this sensitivity and appreciation of the differences that exist between members of minority groups and the majority population, treatment is ineffective.

The specific issues related to training are:

- Most pre-service and in-service training programs do not provide experiences that increase the trainees' sensitivity to cultural/language differences.

- The curriculum offered in most programs does not address assessment, planning, and implementation strategies that consider the cultural variables related to children and families from diverse cultures.

- Mental health and special education professionals and paraprofessionals have very little awareness of minority cultures' patterns of communications, language, values, morality, and learning style.

- Most programs do not teach mental health and special education professionals how to function as members of an interdisciplinary team.

- Methods for service delivery by bilingual, bicultural, same culture staff, or staff from another culture are not addressed.

- Limited emphasis is placed on how one can increase the involvement of difficult to engage families in the treatment process.

- There is minimal, if any, focus on techniques and strategies for providing community education.

Discussion

The task group members who addressed this particular area of concern reported a unique experience. It was initially extremely difficult for the participants to productively address the issues related to training of personnel and to develop specific recommendations for program improvement. This inability to move toward goal attainment was a result of the process issues that arose as the group began to struggle with the task. Process and content became intertwined. The group engaged in lengthy discussions that resulted in clarification and reclarification of the task. Each person found this a very frustrating experience.

The group reported that in order to adequately address this issue, it was necessary for them to deal with the impact of racism on the lives of people from diverse cultures. Because of this, each member had to struggle with his or her own emotional response to having been a target of racism. It was felt that racism was manifested for some groups as a "color" issue. Color can not be hidden and therefore is always a variable to be considered in any human interaction. Each minority group has to deal with some variation of this theme. For Asians, for example, it might be distinctive physical characteristics in addition to color. Racism, which occurs relative to the unique features of a particular minority group, can result in divisions among members of various diverse cultures because the commonality of issues gets lost when the focus or emphasis is placed solely upon differences.

This experience raised the issue of the need for minority group members to avoid becoming prey to the "splitting" effect of racism. As the leader of this task group stated, "There is great danger in groups attempting to 'out minority' one another. This will prevent us from moving towards goal attainment that may result in positive changes within systems." Minority group members must be careful that this phenomena does not become a means of separating minority groups. If this occurs, the commonality of issues will get lost and the emphasis will be placed on differences rather than similarities and unifying themes.

Recommendations

The Task Force members felt very strongly that all programs should have a component that deals with ethnicity training. It was stated that most programs are severely limited in this area. It was further recommended that programs utilize a process-oriented as well as the traditional didactic approach to training education and mental health professionals and paraprofessionals.

The Task Group further recommended that NIMH provide training opportunities through the CASSP Technical Assistance Center and/or the Research and Training Centers. The following recommendations, and the identified issues that were noted under the section entitled "Description of the Problem," should be considered when designing these efforts:

- Pre-service and in-service training in the area of ethnicity training should be mandatory for all professionals and paraprofessionals. The content presented should focus on the identification of homogeneous and heterogeneous characteristics of various minorities and how these factors relate to both similar and unique needs of various minority groups.

- Helping professionals should receive training that provides them with the skills to empower severely emotionally disturbed children and their families. Empowerment will give parents the tools necessary to negotiate the various service delivery systems.

- Educators and therapists must be taught to recognize the impact of cultural influences on the learning and behavioral style of minority children.

- Training programs should contain a strong component that addresses ways to engage parents in their children's education and treatment. Parents should be encouraged to form partnerships with professionals and to act as advocates for their children. Skills training/parent involvement activities should be scheduled at a time convenient to the parents.

- Collaboration across systems is essential if the needs of the "whole" child are to be addressed. Training programs should place special emphasis on how one works as a member of an interdisciplinary or multi-assessment team. Members from various disciplines should be taught the professional terminology and regulations particular to the other professions involved. This will allow the team members to communicate effectively with one another and to establish realistic expectations of what services can be provided by the other discipline.

- Training programs should contain a component designed to teach community outreach strategies. Skills in how to research a community to determine who the informal leaders are and how to appropriately use them as a support system for the family should be provided.

- Systems-oriented approaches, such as the family therapy model utilized in the "Therapist's own Family (TOF)" approach, should be a part of the training program offered to both mental health and special education providers.

- Professionals must be trained to identify the fact that special education and mental health services are inextricably linked. The mental health-special education partnership is essential if the severely emotionally disturbed child is to become a productive member of society.

- Specific training strategies that target special education and mental health administrators must be developed. The need for inclusion of an ethnicity training component in all pre-service and in-service programs should be emphasized. Successful training models should be shared with them for implementation.

POLICY DEVELOPMENT AND ADVOCACY

Description of the Problem

Issues related to policy development and advocacy impact all areas related to the provision of service. Policy development occurs very slowly. This process normally takes years. Policy is usually expressed through laws and regulations which govern programs. Historically, special populations have only received appropriate services after laws were passed which mandated service delivery. One example of this is The Education of All Handicapped Children's Act which mandated free and appropriate special education services for all handicapped children, ages 3 to 21 years.

Currently, there are very few policies, at either the State or Federal level, that focus on the needs of children, including severely emotionally disturbed minority children. This is particularly true within the mental health system. Because of the lack of clear direction or a mandate to provide services to this population, very little is being done. Some organizations and agencies simply ignore children's needs. Most of their limited resources are directed towards services for chronically mentally ill adults.

History has taught us that advocacy activities can become the catalyst that makes children's needs a national- or state-level priority. Legislators and service providers do respond when they are made aware of issues related to a special population, particularly if that information is delivered by a large, well-organized and vocal group.

Discussion

Unfortunately, those who support the development and provision of appropriate services to minority severely emotionally disturbed children and their families are not normally in control of the policy development process. There is little minority representation at the decision-making level. These individuals and agencies can advocate for the development of specific policies. One can advocate for changes in policy that will have a positive impact on this population by disseminating information concerning the needs of severely emotionally disturbed children and their families and the quality of the services being provided to them.

Advocacy is viewed as a necessary precursor to the development of policies focused on the provision of services to severely emotionally disturbed children and their families. Advocacy must occur on all levels. Families, individual special education and mental health professionals, program administrators, professional organizations, community-based organizations, and legislators must form a partnership to effect positive changes in the mental health and special education systems.

The Special Education/Mental Health Task Force felt the following issues must be addressed if advocacy activities are to result in an improvement of services for severely emotionally disturbed children and their families:

- Minority professionals should be willing to function as advocates for these children and families. Their support must be enlisted to help families negotiate appropriate service delivery with systems and/or agencies. Credible, proven minority professionals are needed to act as spokespersons on their behalf.

- Grass roots involvement in the development and monitoring of programs must be fostered.

- Advocacy activities must involve the dissemination of information which explains and reinforces the notion that the needs of minority children are different from those of the majority culture. These differences must be delineated in terms of the specific clinical and educational needs of children and families. Information on culturally-appropriate treatment/educational strategies must also be shared with the professional community.

- There must be some coordination of effort among existing advocacy organizations. Protection and advocacy groups which currently function on behalf of children and families with mental health needs could function as a possible coordinating body.

Recommendations

In order to initiate policy change on the local, state, and national level, advocates must use a variety of techniques and strategies. Lobby efforts must be well organized and coordinated. The Task Force recommends that the following activities be undertaken by NIMH through CASSP:

- The CASSP network should be utilized to disseminate information on proposed changes in policies favorable to severely emotionally disturbed children and their families. The information vehicles used must be varied. Newsletter bulletins and conferences that provide updated information on mental health and education needs should be developed. Support from both the print and visual media should be enlisted to increase the public's awareness of these issues.

- Provisions must be made for the development of leadership within the lay and professional community and the parent population. Fellowships and internships should be offered at universities and within governmental agencies such as NIMH. These fellowships and internships should provide participants with an understanding of the policymaking process.

- CASSP should identify, support, and recognize individuals and organizations/agencies providing leadership to improve services for this population. These should include: (1) policymakers; (2) media figures; (3) community leaders; (4) parents; and (5) professionals.

- Organizations and agencies should secure the services of public relations firms and/or marketing consultants to help them in their advocacy efforts.

- NIMH should encourage members of the lay and professional community to present testimony at public hearings and to submit comments on new policies being considered for implementation by making comments in response to these announcements which are routinely published in the Federal Register. Comments should also be made on the State Plan, which must be developed by each State Education Agency (SEA), as stipulated in P.L. 94-142, The Education for All Handicapped Children's Act, and in proposed regulations for other federally supported programs such as Chapter I of The Elementary and Secondary Education Act (ESEA), The Vocational and Rehabilitation Act, and The Bilingual Education Act. Respondents should make sure that program components that will benefit severely emotionally disturbed minority children be included in these documents. CASSP could provide technical assistance in this area.

- CASSP should create a vehicle for disseminating information to interested individuals, agencies, and organizations of advances in the education and mental health services policy.

- CASSP should develop information, media and other educational materials related to the educational and mental health needs of minority severely emotionally disturbed children for a variety of groups: professionals, administrators, policymakers, parents, other concerned parties, and organizations. These materials should be available in various native languages and for non-readers. Information regarding (1) a description of the children and youth served, inappropriately served, and those who are not being served; (2) costs of not providing timely and appropriate intervention; (3) comparisons of existing state policies and programs across the nation; (4) strategies employed for service delivery to minority populations in rural and urban settings; and (5) available resources for SED children and their families is needed.

- CASSP should identify and cooperate with national, state, and local organizations and agencies with an interest, concern, or mandate regarding the education and welfare of minority children and youth.

- Advocacy efforts should ensure that federal special education policy specifies or identifies minority severely emotionally disturbed children and their families as a priority for attention and support by lobbying for inclusion of mandated services for this population within the following programs, which provide support for:

  A. Direct Services:

     1. P.L. 94-142, The Education for All Handicapped Children's Act.
     2. P.L. 89-313, Chapter 1, The Elementary and Secondary Education Act.
     3. P.L. 99-457, The Education of the Handicapped Amendments, 1986.

  B. Discretionary programs which support the following activities:

     1. Training of personnel;
     2. Parent training and information;
     3. Regional resource centers;
     4. Research and evaluation efforts; and
     5. Information clearinghouses.

- Advocacy efforts should also support the need for expansion of the mental health service delivery system. Federal, state, and local policy needs to include provisions for a full range of mental health services for all severely emotionally disturbed children and their families. Federal, state and local policy should also contain provisions for the delivery of support services to other agencies serving "at risk children."

- Interagency collaboration and cooperation between education and mental health should be mandated and should be included in any legislation regulating the provision of services to this population.

- NIMH through CASSP should develop procedures for monitoring the process states use to develop policies and procedures for developing and implementing interagency agreements between state and local agencies under the P.L. 94-142 State Plan. Fiscal responsibility for the provision of services and procedures for resolving interagency disputes should be included.

- Policy development and improvement at all governmental levels must have input from members of culturally-diverse communities. Such efforts are required in order to provide decisionmakers with relevant data and information.

- All task forces appointed by NIMH to produce reports or make recommendations should have minority representation and should be responsive to input from different minority communities and constituencies.

APPENDIX A:

AGENDA AND PARTICIPANTS LIST

AGENDA

The Minority Severely Emotionally Disturbed Child--Considerations for Special Education and Mental Health Services

March 2-4, 1987

Monday, March 2, 1987

6:30-7:00	**Cocktails and Registration** *Potomac Suite*
7:00-7:15	**Welcome** Lemuel Clark, M.D. and Ira Lourie, M.D.
7:15-9:30	**Dinner and Introductions** Meeting Overview--Barbara Bazron, Ph.D.

Tuesday, March 3, 1987

8:30-9:00	**Continental Breakfast** *Potomac Suite*
9:00-10:15	**Program Updates** • CASSP Overview -- Judith Katz-Leavy, M.Ed. • Mental Health Overview -- Mareasa Isaacs, Ph.D. • Special Education Overview -- Barbara Bazron, Ph.D.
10:15-10:30	**Break**
10:30-12:00	**Brainstorm Issues** Roxane Kaufmann
12:00-12:10	**Small Group Assignments**
12:15-1:30	**Lunch**
1:30-5:00	**Small Group Work**

Wednesday, March 4, 1987

8:30-9:00	**Continental Breakfast**
9:00-11:30	**Reports from Small Groups** Additional Comments
11:30-12:00	**Check out and break**
12:00-1:00	**Working Lunch**
1:00-2:00	**Follow-up Recommendations** **Dissemination** **What Next?**

Participants

The Minority Severely Emotionally Disturbed Child--Considerations for Special Education and Mental Health Services

March 2-4, 1987
Washington, D.C.

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APPENDIX B:

AN OVERVIEW OF THE PROVISION OF MENTAL HEALTH SERVICES TO SEVERELY EMOTIONALLY DISTURBED CHILDREN AND THEIR FAMILIES

(MAREASA ISAACS, Ph.D.)

An Overview of the Provision of Mental Health Services to Severely Emotionally Disturbed Children and Their Families

(Mareasa Isaacs, Ph.D.)

Mental health does not have the laws and mandates that describe its role and responsibility for children similar to those that govern special education. Those laws that do exist vary greatly from state to state. Very few state resources are spent on children's services. In most instances, the state service delivery system focuses on chronically mentally ill adults. Children have special mental health needs that are very different from those seen in adult populations.

It is sometimes difficult for special education and mental health to provide services collaboratively to severely emotionally disturbed children and youth. The first issue is related to how the two systems define the population. Children in special education programs are eligible for services up to age 21 or graduation. This is not true in the mental health system. An individual is eligible for children's services up to age 18. If a child needs services beyond that age, they must enter an adult program. This may have a deleterious rather than positive effect on his/her mental health. A common definition of the population would facilitate the coordination of interagency planning and service delivery. Each system also has a very different perspective with respect to the confidentiality of records. Under the special education rules and regulations, parents and anyone with educational responsibility have a right to review records unless it is determined to be harmful to the child. The parent or emancipated minor can give other agencies access to educational records. Mental health believes that all patient records are confidential. This means that in most instances neither the patient nor professionals from other disciplines, such as special education, have access to this information. In the State of New York, two sets of records are maintained for each child: one for mental health and one for special education. Education professionals cannot review mental health records. This perpetuates the "elitist" myth the community has about mental health. This can make joint program planning difficult if not impossible.

P.L. 94-142 mandates that a continuum of educational services that represent the least to most restrictive placements be made available to handicapped children. This includes minority severely emotionally disturbed children. This concept creates problems for mental health. In most instances there are no resources available for children in the community. Children may be placed in a more restrictive program than necessary in order to receive any services at all. Another factor is that there are often waiting lists for up to three years for these services. Thus children either receive no services or are poorly served. Financial considerations are also an issue that must be addressed if special education and mental health are to develop linkages. According to P.L. 94-142, severely emotionally disturbed children must receive "a free and appropriate" education. Each state receives federal funds that cover the excess cost of providing these specialized services. Mental health services are not funded since there is no similar legislation. Thus in the mental health area, the question of who will pay for the mental health services these children desperately need must be answered. Particularly if those services are provided during the school day.

Several states have developed agreements that provide funding for joint special education/mental health programs. New York State recently agreed to provide joint day treatment services for severely emotionally disturbed children. The State Board of Education and the Board of Regents recognized day treatment is a major and necessary treatment component for every severely emotionally disturbed child. This means that all severely emotionally disturbed children within the state will be eligible for these services, at no cost to the parents. The cost of these programs will be borne by both agencies. Programs will be developed jointly by special education and mental health. The mental health treatment team responsible for the development of the treatment plan will be comprised of the mental health professional and the classroom teacher. The same team will also be responsible for the development of the IEP stipulated under P.L. 94-142.

APPENDIX C:

SELECTED FEDERAL LEGISLATION AND CASE LAW RELATED TO THE EDUCATION OF MINORITY CHILDREN WHO ARE SEVERELY EMOTIONALLY DISTURBED

Selected Federal Legislation and Case Law Related to The Education of Minority Children Who Are Severely Emotionally Disturbed

Federal Legislation

PL 88-164

Mental Retardation Facilities and Community Mental Health Centers Construction Act (1963)

Title III of this law amended PL 85-926 to provide training of personnel in all areas of education for the handicapped at all levels of preparation from teachers' training to the training of college instructors, research personnel, and the administration and supervision of teachers of the handicapped.

Title III also expanded the areas of teacher training to include not only the mentally retarded but also the hard of hearing, deaf, speech-impaired, visually handicapped, seriously emotionally disturbed, crippled, and other health-impaired children.

PL 93-380

Education Amendments of 1974 (1974)

PL 93-380 extended and amended the Elementary and Secondary Education Act of 1965. It is regarded as one of the major pieces of legislation relative to the education of handicapped children and provided the basic framework for PL 94-142, Education for All Handicapped Children Act of 1975.

PL 93-380 established a national policy on equal educational opportunity and emphasized the right of every United States citizen to an education to meet his or her full potential without financial barriers(Sec. 801). Many specific provisions for the handicapped are contained in PL 83-380, including (1) the establishing of a goal to provide full educational opportunity to all handicapped children along with procedures to guarantee funding of this goal, and (2) the provision of procedural safeguards for handicapped children and their parents relative to the identification, evaluation, and educational placement of handicapped children. Included are procedures to guarantee that handicapped children, to the maximum extent possible, are educated with nonhandicapped children; and that testing and evaluation materials used with the handicapped child are non discriminatory.

PL 93-380 also contained the Family Rights and Privacy Act (Title V, Secs. 513, 514), more commonly known as the Buckley Amendment. Essentially the purpose of the Buckley Amendment is to give parents of public school students under 18 years of age the right to see, correct, and control access to student records. Schools are required to notify all parents of their legal rights in this regard, including a description of the procedures for obtaining access and for removing false or misleading information.

The amendment requires that all relevant pupil records and documents that are maintained by an educational agency (e.g., elementary school, university) must be made available within forty-five days of a request to view such. Certain exemptions are allowed, such as a teacher's "personal notes" on a child that are not intended to be shared with anyone else.

The amendment also allows individuals over 18 years of age to see their own records. Some exemptions are allowed, however, including the financial records of the individual's parents.

Section 439, "Protection of Pupil Rights", states: "All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section 'research or experimentation program or project' means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques."

PL 94-142

The Education for All Handicapped Children Act of 1975 (1975)

PL 94-142, an amendment and extension of Part B of PL 93-380, is the most comprehensive and significant piece of legislation regarding the education of handicapped children. The act passed both the House (404-7) and Senate (87-7) by overwhelming margins and was signed into law by President Ford on November 29, 1975. The final Regulations pertaining to PL 94-142 are printed in the August 23, 1977 issue of the Federal Register, and the reader is encouraged to read these Regulations carefully.

In brief, PL 94-142 mandates a free, appropriate public education (FAPE) for all handicapped children and youth. Special education and related services must be provided at no cost to the child or his parents.

All handicapped children and their parents shall be guaranteed due process with regard to identification, evaluation and placement procedures. A written individualized education program (IEP) must be developed and implemented for each child receiving special education services.

Also, to the maximum extent possible, handicapped children should be educated with nonhandicapped children--in the least restrictive environment considered appropriate to the child's needs. Tow priorities are specified under PL 94-142: (1) first priority children--handicapped children currently not receiving any education, and (2) second priority children--handicapped children within each disability, with the most severe handicaps who are receiving an inadequate education. The federal government is committed to assuming fiscal responsibility for up to 40 percent of the excess costs incurred in providing such programs.

PL 94-142 also emphasizes the primary responsibility that local education agencies have in the provision of appropriate educational programs for its handicapped children and also for the periodic review and monitoring of such program. Local education agencies must also file a written plan clearly stating the procedures that they are employing to meet the mandates of the law, including (1) assurances of extensive child find procedures, nondiscriminatory testing and evaluation, "full service" goal and timetable; (2) a guarantee of complete due process procedures; (3) a guarantee of policies and procedures to protect the confidentiality of pupil data and information, etc.

PL 94-142 applies to all handicapped children and youth, ages 3-21 inclusive, and included within the definition are the deaf, deaf-blind, hard of hearing, mentally retarded, multihandicapped, orthopedically impaired, other health impaired, seriously emotionally disturbed, specific learning disability, speech-impaired, and visually handicapped (Sec. 121a.5). See PL 98-199.

Case Law

Armstrong v. Kline (Battle v. Commonwealth) (476 F. Supp. 583, E.D., Pa., 1979; Aff'd CA 78-0172, 3rd Cir., July 15, 1980)

A cross-category class action suit filed in the U.S. District Court for the Eastern District of Pennsylvania on behalf of three severely handicapped students and their parents as well as of all other Pennsylvania residents with similar handicapping conditions. At issue was the policy of the Pennsylvania Department of Education that would prohibit the provision or funding of special education programs for handicapped children that would exceed in length those provided to nonhandicapped children (the normal school year of 180 days). In addition, Department of Education policy also forbade hearing officers at due process hearings from approving any educational program that exceeded 180 days per year, in effect ruling out the approval and funding "summer programs" for severely handicapped students.

The plaintiffs argued that the department's 180 Day Rule was in violation of PL 94-142. Their basic position was that severely handicapped students, in particular, learn very slowly, are adversely affected when their educational programs are interrupted during the summer months (they regress in, or lose, basic skills), and take a substantial amount of time to regain or recoup these losses once their schooling begins again in the fall. In brief, it was argued that severely handicapped students could not be expected to make any real progress toward their established programming goals unless the regression/recoupment aspect caused by the 180 day rule be eliminated.

In June 1979, Judge Clarence Newcomer ruled in favor of the plaintiffs, stating that the Pennsylvania Department of Education's 180 day rule was in violation of PL 94-142. He also ruled that the Department's policy regarding hearing officers in these cases likewise was inviolation of PL 94-142.

The defendants appealed Newcomer's decision to the U.S. Third Circuit Court of Appeals. On July 14, 1980, this court upheld Judge Newcomer's decision, concurring that the 180 day rule violated the plaintiff's rights under PL 94-142. One of the most significant implications of this ruling is the court's recognition that, in order for a handicapped student's education to be considered "appropriate", it must be tailored to the student's individual needs and must include a reasonable program in order to allow the attaining of the student's educational objectives.

Brown v. State Board of Education of Topeka (347 U.S. 483, 493, 1954)

A landmark court decision in which the United States Supreme Court declared that racially segregated education is inherently unequal. In effect, Brown invalidated the former "separate but equal" doctrine, reasoning that racial segregation denies the constitutional right of equality of education. The Brown decision has had a most significant impact on many issues of educational law and procedure and has been cited as the basis for many of the "discrimination suits" involving the education of handicapped children.

Diana v. State Board of Education (c-70-37, RFP District Court for the Northern District of California, 1970)

In Diana, a class action suit was filed on behalf of nine Mexican-American public school children, ages 8-13, who had been placed in classes for the mentally retarded. It was alleged that these children had been improperly placed in classes for the mentally retarded on the basis of biased individual intelligence tests.

An out-of-court settlement was reached in the Diana case, which mandated that several significant practices were to be observed in the future. For example, children whose primary language is not English must henceforth be tested in both their primary language and English. Also, such children must be tested only with tests that do not depend upon vocabulary, information, and other discriminatory and unfair verbal questions. Further, school districts with a disproportionate number of Mexican-American pupils in their special classes were required to justify in writing the reasons for such a disparity.

Drycia S. v. Board of Education (79 Civ. 270, 1979)

A class action suit brought on behalf of Puerto Rican and other Hispanic children in New York City who have limited English proficiency and are handicapped and those who require bilingual-bicultural special education programs for which they were not being promptly assessed and placed. On February27, 1980, a consolidated judgment was rendered on behalf of the plaintiffs. This case marked the first major action in the United States that required the provision of bilingual special education for handicapped students who are more proficient in a language other than English.

Goss v. Lopez (419 U.S. 565, 42 L Ed 2d, 725, 95 S Ct. 729, 1975)

A widely cited U.S. Supreme Court decision that served as the precedent for many later cases involving the suspension or expulsion of special education students. In Goss, the court decided that students facing temporary suspension from school are entitled to protection under the due process clause of the Fourteenth Amendment.

Acting on direct appeal from the U.S. District Court for the Southern District of Ohio, the Supreme Court in a split decision, ruled that the Ohio statute which empowered the principal of an Ohio public school to suspend a student for misconduct for up to ten days or to expel him (in either case the principal must notify the student's parents within twenty-four hours and state the reasons for his action) violated the due process clause of the Fourteenth Amendment insofar as it permitted up to ten days' suspension without notice of hearing either before or after the suspension. All suspensions involved in the Ohio case therefore were declared invalid.

In Goss, the court did recognize the possibility of exceptions, however, stating that "students whose presence poses a continuing danger to persons or property or an on-going threat of disrupting the academic process may be immediately removed from school." See related cases: Doe v. Koger, S-1 v. Turlington, and Stuart v. Nappi.

Larry P. v. Riles (C-71-2270 U.S.C., 343 F. Supp. 1306, N.D. Cal., 1972; 343 F. Supp. 1306, 502 F. 2nd. 963 N.S. Cal., 1979)

An extremely important and controversial series of decisions involving the issue of bias in assessment in the identification of black students as mentally retarded and their subsequent placement in special classes. The original complaint was filed in 1971 in behalf of black students in California who had been placed in special classes for the educable mentally retarded as well as in behalf of those black students who in the future might be inappropriately placed in such classes. The major issue and complaint in the case was that the standardized intelligence tests used to identify and place black students in special education classes were racially biased. The defendant was Wilson Riles, Superintendent of Instruction in California. In 1982 the court ruled that the original case could proceed as a legitimate class action suit on behalf of all black children in San Francisco who had been placed in EMR classes as a result of the stated individual intelligence tests. A restraining order was given, prohibiting the placement of black students in EMR classes based primarily on IQ tests. Following an appeal by the defendants, the circuit court of appeals in 1974 upheld the lower court's injunction. The case was expanded to a class action suit on behalf of all black students in California who had been classified, or who might be reclassified, as mentally retarded on the basis of current individual intelligence tests. In 1974 the court prohibited the use of culturally biased tests with black students in California, along with the placement of black children in EMR classes based upon culturally discriminatory test results.

An amended complaint was filed by the plaintiffs in 1977, and they were joined by the U.S. Department of Justice as amicus curiae during the same year. In 1979 Judge Robert Peckham ruled in favor of the plaintiffs. The three major components of Judge Peckham's ruling were as follows: (1) no longer could the state of California use, allow the use of, or approve the use of any standardized intelligence test for the identification of black students as EMR and/or their subsequent placement in EMR classes; (2) the state was ordered to eliminate the disproportionate placement of black students in EMR classes; and (3) a reevaluation of all black children currently identified as EMR was required. Standardized intelligence tests were prohibited from the reevaluation process. See PASE v. Hannon.

Lora v. New York City Board of Education (456 F. Supp. 1211, 1275 E.D.N.Y., 1979)

A class action suit, originally initiated in 1975, on behalf of black and Hispanic children placed in special day schools for emotionally disturbed students. A U.S. District Court ruling in July 1979 was made in favor of the plaintiffs. As part of this ruling, Judge Weinstein stated that (1) the process used for evaluating these students violated the students' right to treatment and due process; (2) to the extent that the students were referred to largely socially segregated schools, there was a denial of equal education opportunity, a violation of Title VI; and (3) New York City's financial problem could not be used as an excuse for a violation of students' rights.

McKenzie v. Jefferson (566 F. Supp 404, 1983)

This case involved the issue of whether or not a school district (District of Columbia Public Schools) was required to pay for psychiatric hospitalization for a seriously emotionally disturbed teenager, Alexandra Jefferson, under the related services provision of PL 94-142. Alexandra's parents contended that the school district was responsible for paying the costs of both Alexandra's educational day program and her hospitalization in a psychiatric facility. The court agreed with the argument that Alexandra was, in fact, a seriously emotionally disturbed child, who would not be able to participate in any educational program without psychiatric hospitalization.

The court pointed out, however, that psychiatric hospitalization does not fit the definition of special education and that the only definition it could possibly fit would be that of related services. Upon analysis of PL 94-142 to determine if psychiatric hospitalization could be interpreted as a related service, the court ruled that it could not be interpreted as such. In reaching its decision, the court reasoned that psychiatric hospitalization cannot be a related service because it requires medical doctors and many hours per day--unlike clean intermittent catherization (CIC) procedures which can be provided by non-medical personnel. The court reasoned that a related service must be a support service--not a main service, and for a school district to provide psychiatric hospitalization as a related service, the related service would become the main service. Thus the court ruled against Alexandra's parents, denying their claim that the District of columbia Public Schools was required to pay for Alexandra's hospitalization costs under PL 94-142.

Reference:

Davis, William E. Resource Guide to Special Education Boston: Allyn and Bacon, Inc., 1986.

APPENDIX D:

NEW FEDERAL EARLY INTERVENTION PROGRAM UNDER P.L. 99-457

NEW FEDERAL EARLY INTERVENTION PROGRAM UNDER P.L. 99-457

Objective

Establishes a new state grant program for handicapped infants and toddlers, ages birth through two years, for the purpose of providing early intervention services for all eligible children as defined by the legislation. This program appears as a new Part H of the existing Education of the Handicapped Act (EHA).

Eligible Population

The legislation defines the eligible population as all children from birth through two years of age who are developmentally delayed (criteria to be determined by each state), or with conditions that typically result in delay, or (at state discretion) are at risk of substantial developmental delay.

Timelines

To receive a grant for the:

First Two Years: The Governor must designate a lead agency (there is state discretion respecting which agency is designated) for overall administration of the program.

The Governor must also establish an Interagency Coordinating Council composed of relevant agencies, consumers, and providers, This Council is to assist in the development and implementation of the state applications, as well as assist in interagency agreements and the identification of resources, and is to otherwise advise the state. The Council may also serve as the lead agency.

Third Year: The state must demonstrate that it has adopted a public policy which provides all of the components of a statewide system for providing early intervention services to all eligible infants and toddlers.

Fourth Year: The state must demonstrate that it has in effect a statewide system for providing early intervention services. The state must also provide for all eligible children the following: multidisciplinary assessments, individualized family service plans, and case management services.

Fifth and All Succeeding Years: The state must make available to all handicapped infants and toddlers within the state appropriate early intervention services.

Early Intervention Services

Early intervention services must include, for each eligible child, a multidisciplinary assessment and a written Individualized Family Service Plan (IFSP) developed by a multidisciplinary team and the parents. Services

(Over)

which may be provided must be designed to meet developmental needs and may include special education, speech and language pathology and audiology, occupational therapy, physical therapy, psychological services, parent and family training and counseling services, transition services, medical services for diagnostic purposes, and health services necessary to enable the child to benefit from other early intervention services. Case management services must be provided for every eligible child and his/her parents.

All early intervention services must be provided at no cost to parents except where federal or state law provides for a system of payments by parents, including provision for a schedule of sliding fees.

The Individualized Family Service Plan (IFSP)

The IFSP must contain: (a) a statement of the child's present levels of development (cognitive, speech/language, psychosocial, motor, and self help); (b) a statement of the families strengths and needs relating to enhancing the child's development; (c) a statement of major outcomes expected to be achieved for the child and family; (d) the criteria, procedures, and timelines for determining progress; (e) the specific early intervention services necessary to meet the unique needs of the child and family including the method, frequency and intensity of service; (f) the projected dates for the initiation of services and expected duration; (g) the name of the case manager; and (h) procedures for transition from early intervention into the preschool program.

The IFSP must be evaluated at least once a year, and must be reviewed every six months or more often where appropriate.

Use of EHA Funds

Federal funds under this program are to be used for the planning, development, and implementation of the statewide system for provision of early intervention services. Funds may also be used for the general expansion and improvement of services. However, in the provision of actual direct program services, federal funds under this program shall be the "payor of last resort," i.e., EHA funds may not be used when there are other appropriate resources which can be used or are being used, whether public or private, whether federal, state, or local. This provision emphasizes the critical importance of achieving efficient and effective interagency participation in each state.

Other Provisions of the New Law

- Each state must submit an annual application which includes the necessary assurances based upon the timetable just mentioned. At the appropriate time, that annual application must specify the role and financial contribution of each participating agency and must provide a description of the state's procedural safeguard system when complaints are brought by parents.

- Funds under this program will be allocated to the states based upon their relative number of children birth through two years, i.e., a census-based allocation and not an allocation based upon numbers of children served. Fifty (50) million dollars is authorized for fiscal year 1987, $75 million for fiscal year 1988, and "such sums as may be necessary" for the following years.

- Provision of all services must be by qualified personnel, and the state must have a system for the establishment and maintenance of standards, certification, and licensing policies.

- The state planning, development, and implementation grants under the prior EHA, Part C, (as authorized in P.L. 98-199) are repealed. The committee report accompanying P.L. 99-457 emphasizes that the activities under that previous authority will continue to be supported under this new EHA, Part H, as well as under the new Preschool Grant.

- The U.S. Secretary of Education and the U.S. Secretary of Health and Human Services are required to conduct a joint study of federal funding sources and services for early intervention programs and are ordered to facilitate interagency coordination of federal resources. They are to report their findings and actions to the Congress within 18 months from the enactment of P.L. 99-457.

EARLY EDUCATION DISCRETIONARY PROGRAM
EHA, PART C, SEC. 623 (also known as HCEEP)

P.L. 99-457 reaffirms the proven components of EHA, the Part C early education authority and refines that authority to maximize support toward achieving the objectives of the new early intervention and preschool initiatives.

- Experimental, demonstration, and outreach programs are authorized, with priority given to outreach and demonstration with respect to three through five year old children.

- Projects designed to demonstrate cost effective methods are encouraged.

- A technical assistance developmental system is authorized, which system shall provide support to the experimental, demonstration, and outreach programs under this authority as well as support to state agencies.

- Early childhood research institutes are authorized to carry out sustained research to generate and disseminate new information on early education.

- The state planning, development, and implementation grants authorized through P.L. 98-199 are repealed in light of the new EHA, Part H, and the revised EHA, Sec. 619.

NEW FEDERAL PRESCHOOL PROGRAM UNDER P.L. 99-457

All the rights and protections of P.L. 94-142 (EHA, Part B) are extended to handicapped children ages three through five years in school year 1990-91. To support the achievement of this objective, the prior Preschool Incentive Grant program (P.L. 94-142, Sec. 619) is revised to reflect authorization of a dramatic increase in the federal fiscal contribution for this age group.

- By school year 1990-91, all states applying for P.L. 94-142 funds will have to assure that they are providing a free appropriate public education to all handicapped children ages three through five. Failure to comply will mean the loss of the following:
    - the new Preschool Grant;
    - monies generated under the larger P.L. 94-142 formula by the three through five population served; and
    - grants and contracts related to preschool special education authorized under the EHA discretionary programs, Parts C through G.

- The states are not required to report children served three through five years by disability category. Thus the states are not required to categorically label these children because of the data collection requirements of EHA, Sec. 618.

- The committee report accompanying the legislation states that family services play an important role in preschool programs and that whenever appropriate and to the extent desired by the parents, the preschooler's individualized education program (IEP) will include instruction for parents.

- The committee report affirms variations in length of school day and range and variety of preschool programs, examples being part-day home-based, and part or full-day center-based.

- This program will be administered through the state education agency and local education agencies. However, SEA's and LEA's may contract with other programs, agencies, and providers in order to provide a range of service models.

- The federal authorization levels are: (track a) $300 for each 3 through 5 year old handicapped child served in the previous school year; and (track b) a maximum of $3,800 for each 3 through 5 year old the state intends to serve in the coming year beyond the previous year's count. These are authorization levels only. The Congress must still appropriate the actual amounts each year, commencing this year.

The basic amount authorized under track a escalates:

- FY 87 (school year 87-88)	$300 per child	
- FY 88 (school year 88-89)	$400 per child	
- FY 89 (school year 89-90)	$500 per child	
- FY 90 (school year 90-91)	$1,000 per child	(track b for unserved ends)
- thereafter	$1,000 per child	

(Over)

In each year, children counted as unserved (track b) are only those beyond the previous year's count. Children counted in the first year under track b would generate funds under track a in the second year.

Example:

1st year State A serves 1,000 3-5 year olds this year and reports it will serve 250 more in first year. Under formula state A receives:

1,000 x $300 = $ 300,000
250 x $3,800 = $ 950,000
$1,250,000

2nd year Serves 1,250 3-5s in first year. Reports it will serve 250 more in second year. Under formula state A receives:

1,250 x $400 = $ 500,000
250 x $3,800 = $ 950,000
$1,450,000

3rd year Serves 1,500 3-5s in second year. Reports it will serve 250 more in third year. Under formula state A receives:

1,500 x $500 = $ 750,000
250 x $3,800 = $ 950,000
$1,700,000

4th year Serves 1,750 3-5s in third year. Must be serving all children by then. Under formula state A receives:

1,750 x $1,000 = $1,750,000

- The full service mandate is delayed for one year until school year 1991-92 if:
  - federal appropriations for this program for FY '87, '88, and '89 do not total $656 million (projected full funding); and
  - the federal appropriation for FY '90 is less than $306 million ($900 per child)
- The in-state distribution of federal funds under this new Preschool Grant is:
  - FY '87 5% SEA Administration
    25% SEA Discretion
    70% LEA's and IEU's (IEU - Intermediate educational unit)
  - FY '88 and beyond 5% SEA Administration
    20% SEA Discretion
    75% LEA's and IEU's

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APPENDIX E:

P.L. 99-457: THE NEW LAW

PL 99-457

The New Law

by Barbara J. Smith, Ph.D.

Background

For over 20 years, the federal government has been supporting research into the effectiveness of early intervention with handicapped and at risk young children and their families. In addition to research studies, projects have been funded to develop model practices for effective early intervention.

These research and model development projects, along with programs such as Head Start, have proven that early intervention is effective. We now know that if we provide support and services to children and families as early as the need is apparent, then: 1) the child's development will not be as delayed as it would be if left unattended until age 6 or older; 2) the stress for the family of having a handicapped child is lessened and they are able to function more productively; and, 3) because of these results, children and families are more able to contribute to their community — indeed, early intervention can prevent the need for many costly services later in life.

In recognition of the effectiveness and critical importance of early intervention, the United States Congress passed Public Law 99-457 in September, 1986.

Overview

P.L. 99-457, the Education of the Handicapped Act Ammendments of 1986, includes provisions for handicapped children of all ages, as well as for personnel and other activities. However, the most dramatic provisions of this new law relate to handicapped and 'at risk' children between the ages of birth and six and their families. Indeed, the law states:

"The Congress finds that there is an urgent and substantial need:

1) to enhance the development of handicapped infants and toddlers and to minimize their potential for developmental delay;

2) to reduce the educational costs to our society, including our nation's schools, by minimizing the need for special education and related services after [they] reach school age;

3) to minimize the likelihood of institutionalization of handicapped individuals and maximize the potential for their independent living in society; and,

4) to enhance the capacity of families to meet the special needs of their infants and toddlers with handicaps."

Regarding young children and their families, P.L. 99-457 established two new federal programs. One new program addresses 3 through 5 year-old handicapped children, and the other addresses handicapped and at risk infants and toddlers from birth to age three.

Dr. Barbara J. Smith completed her doctorate in Special Education at the University of North Carolina. She has served as a member of the CEC Governmental Relations Staff and most recently as a special consultant to CEC in working with the congressional committees of Senator Lowell Weicker and Congressman Pat Williams, which formulated P.L. 99-457.

Dr. Smith is recognized as a national leader in policy issues regarding the education of young handicapped children. Her paper, which is presented here, was written at the invitation of the Chapel Hill Training Outreach Project.

The Preschool Grant Program (3-5 year-olds)

First, P.L. 99-457 creates a new mandate for state education agencies to serve all three, four, and five year-old handicapped children by 1990-1991. This new preschool mandate was achieved by lowering the P.L. 94-142 mandate to age three. P.L. 94-142, the Education for All Handicapped Children Act of 1975, created a "right to education" for handicapped children between ages six and eighteen. However, to encourage states to serve children below the ages of six, Congress created the Preschool Incentive Grant in 1975, which, instead of mandating, simply provided some incentive monies. Now this "right to education" is extended to children beginning at age three.

This new Preschool Grant Program changes the old Preschool Incentive Grant in several ways — it is, in fact, a mandate, rather than an incentive, and it provides more than three times the funding for 3-5 year-olds!

Who are the Eligible Children?

The Preschool Grant Program's purpose is to extend P.L. 94-142 rights to children from age three, including all definitions and requirements. Moreover, three, four and five year-olds are eligible for services under this new program if they are handicapped according to one or more of the P.L. 94-142 diagnostic categories: deaf, deaf-blind, hard of hearing, mentally retarded, multi-handicapped, orthopedically impaired, other health impaired, seriously emotionally disturbed, specific learning disability, speech impaired, and visually handicapped.

However, Congress made an important distinction for the preschooler: the documentation and count of children required by the federal government from the states does not have to be by diagnostic category for this age group. This allows states to serve 3-5 year-olds without labeling them.

P.L. 94-142 was changed a second way for this age group: parental instruction is an allowable cost, rather than only services delivered directly to the child. This was in recognition of the important role parents play in the lives of preschool-aged children. Finally, P.L. 99-457 preschool services differ from school-aged requirements under P.L. 94-142 in that variations in length of day, or service model (home-based, center-based, etc.) are encouraged. Also, local education agencies are encouraged to contract with appropriate existing non-public school community preschool programs to provide a range of services and service models such as the mainstreaming opportunities offered by Head Start.

What is Mandated and When?

P.L. 99-457 requires that states, through their state education agencies, participating under P.L. 94-142, ensure that they are providing a "free, appropriate, public education" to all handicapped children beginning at age three, by 1990-91. Currently, all states ensure that they are providing appropriate services, including individualized education programs (IEP), due process, least restricted environment, non-discriminatory testing, parent involvement, and support services to all handicapped children beginning at age six. About half the states currently serve three, four, and five year-olds.

What is the Funding Level?

The Preschool Grant Program has two channels of funds: a) one for reimbursing school districts for children served in the previous year (served children); and, b) one for advance payment for the number of additional children the state reports they *intend* to serve the following year (unserved children).

Served children will generate up to $300/child in fiscal year 1987; $400/child in fiscal year 1988; $500/child in fiscal year 1989; and $1,000/child thereafter. Unserved children generate up to $3,800/child until 1990, then all children generate up to $1,000/child.

If the state does not, in fact, serve all the unserved children they intended to serve and received advanced payment for, their next year's allocation will be adjusted downward. Similarly, if the state serves more unserved than intended, the following year's allocation is adjusted upward.

What Happens if a State does not Comply?

If a state does not ensure a free, appropriate, public education beginning at age three to all handicapped children by 1990-91, it will lose the following federal funds:

— all Preschool Grant Funds;

— all P.L. 94-142 dollars that were generated by the 3-5 year-olds;

— and all grants and contracts related to preschool special education funded under the Education of the Handicapped Act discretionary programs.

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Handicapped Infants and Toddlers Program

The second landmark early intervention program established by P.L. 99-457 is the Handicapped Infants and Toddlers Program. This section of the law creates a brand new federal program for handicapped and at risk children from birth to age three years and their families. The Congressional purpose of this program is to provide financial assistance to states to:

1) develop and implement a statewide, comprehensive, coordinated, multi-disciplinary, interagency program of early intervention services;

2) facilitate the coordination of early intervention resources from federal, state, local, and private sources (including private insurers); and

3) enhance states' capacities to provide quality early intervention services.

While the infant and toddler program is voluntary for states — that is, they may elect to not participate — if a state does choose to participate, or apply for funding under this law, it must meet the requirements of the law. And, to be eligible for a grant in the fifth year, the state must assure that services are available to all eligible children.

Who is Eligible for Services?

The new Infant and Toddler Program is directed to the needs of children, birth to their third birthday, who need early intervention because they

1) are experiencing developmental delays in one or more of the following areas: cognitive, physical, language and speech, psychosocial, or self-help skills; or

2) have a physical or mental condition that has a high probability of resulting in delay (e.g., Down's Syndrome, cerebral palsy, etc.); or

3) at state discretion, are at risk medically or environmentally for substantial developmental delays if early intervention is not provided.

Secondly, the infant and toddler's family may receive services under this program that are needed to facilitate their capacity to assist in the development of their child.

What Must States Provide?

If a state applies for funds under this program, it must meet the following requirements:

The first two years:

1) the governor has established an Interagency Coordinating Council made up of parents, providers, state agency representatives, personnel trainers, state legislature representatives, and others:

2) the governor has designated a lead agency (which may be the Interagency Coordinating Council); and,

3) the state assures that the funds will be used to plan, develop and implement statewide services.

The third and fourth years:

1) in addition to the requirements of the first two years, the state must assure that it has adopted a policy which contains the required components of a statewide system, which are:

- A definition of the term "developmentally delayed"
- Timetables for ensuring services to all eligible children by the fifth year of participation
- Multidisciplinary evaluations of the functioning of all eligible children and the needs of their families to assist in the development of their child
- Provision of a written individualized family service plan (IFSP) for all children
- Comprehensive Child Find system including a system for making referrals to providers. "Primary referral sources" must be included — including hospitals, physicians, other health care

providers and agencies, and daycare facilities

- A public awareness program focusing on early identification
- A central directory containing State resources, services, experts, and research and demonstration projects
- A comprehensive system of personnel development — including training of public and private service providers, primary referral sources, as well as pre-service training
- The system must include a single line of authority in a *lead agency* designated or established by the Governor to carry out: the general administration, supervision, and monitoring of programs and activities; the identification and coordination of all available resources within the state from federal, state, local and private sources and the assignment of financial responsibility to the appropriate state agency; the resolution of state interagency disputes and procedures for ensuring the provision of services pending the resolution of such disputes; and, the entering into formal state interagency agreements that define the financial responsibility of each state agency for paying for early intervention services (consistent with state law) and include, among other things, procedures for resolving dispute
- A policy pertaining to the contracting or making of other arrangements with local providers
- A procedure for securing timely reimbursements of funds between state and local agencies
- Procedural safeguards with respect to the settlement of disagreements between parents and providers, the right to appeal, the right to confidentiality of information, the opportunity to examine records, assignment of surrogate parents, written prior notices to parents in their native language, and procedures to ensure the provision of services pending the resolution of complaints
- Policies and procedures relating to the establishment and maintenance of personnel training, hiring, and certification/licensing standards
- A system for compiling data on the early intervention programs (may include sampling).

2) And that the statewide system will be in effect no later than the beginning of the fourth year, except for the assurance of full service to all eligible children.

The fifth and succeeding years:

1) The state must assure that the system is in effect and full services are available to eligible children.

Early intervention services must include, for each eligible child, a multidisciplinary assessment and a written Family Service Plan (IFSP) developed by a multidisciplinary team and the

parents. Services which may be provided must be designed to meet the developmental needs of the child and be in accordance with an IFSP and may include special education, speech and language pathology and audiology, occupational therapy, physical therapy, psychological services, parent and family training and counseling services, transition services, medical services for diagnostic purposes, and health services necessary to enable the child to benefit from other early intervention services. Case management services must be provided for every eligible child and his/her parent.

All early intervention services must be provided at no cost to parents except where federal or state law provides for a system of payments by parents, including provision for a schedule of sliding fees.*

What are the Individualized Family Service Plan (IFSP) Requirements?

The IFSP must be developed by a multidisciplinary team and contain: (a) a statement of the child's present levels of development (cognitive, speech/language, psychosocial, motor, and self-help); (b) a statement of the family's strengths and needs relating to enhancing the child's development; (c) a statement of major outcomes expected to be achieved for the child and family; (d) the criteria, procedures, and timelines for determining progress; (e) the specific early intervention services necessary to meet the unique needs of the child and family including the method, frequency, and intensity of service; (f) the projected dates for the initiation of services and expected duration; (g) the name of the case manager; and, (h) procedures for transition from early intervention into the preschool program.

The IFSP must be evaluated at least once a year, and must be reviewed every six months or more often where appropriate.*

What is the Funding Level?

Congress authorized $50 million for Fiscal Year 1987, $75 million for Fiscal Year 1988, and such sums as may be necessary thereafter.

Funds are to be distributed to the states based upon the relative number of infants, birth to three, in the state compared to other states; that is, based on census, not actual, child count.

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*These descriptions are taken from materials provided by the Council for Exceptional Children.

Implications

As in all new nationwide or statewide efforts, there are many implementation issues to solve and to discuss. P.L. 99-457 stresses the importance of a coordinated and multi-agency approach to the planning and dialogue that is necessary to implement the new early childhood initiatives. Indeed, a critical component of the new programs is the acknowledgment that a wide variety of local providers (public and private) should be contracted with in order to meet the requirements of the Act in a cost-effective way, while also providing a continuum of services to meet the individual needs of children a families. Secondly, the Infants and Toddlers Program mandates each state to establish an Interagency Coordinating Council to facilitate such a multi-agency dialogue. Interested individuals, providers, and parents have many opportunities to influence state and local implementation of P.L. 99-457. Local interagency groups should begin to discuss and plan the state and local solutions to early intervention and preschool services in their area.

At least two policy issues will dramatically influence implementation in each state, and both require input from all concerned groups. These two issues are the development of program standards and personnel standards. Each state will need to establish standards which agencies may use to evaluate appropriate placement options for children. In order to meet the wide variety of needs of children and families, these standards should be as inclusive as possible while also ensuring a high quality of service. Program standards should be developed to address the full continuum of services — from center-based specialized settings to child care and other community mainstreamed settings. Personnel standards will need to address professional and paraprofessional competencies across many disciplines. Standards should acknowledge the unique needs of the birth to five population, while also acknowledging the important role current providers play.

Creative solutions will be necessary in orer to address the unique needs of the population while a shortage of available personnel exists. Training new personnel and providing in-service training to current personnel who either need certification/licensing, or who need added competencies to meet the needs of very young children, will be critical. Secondly, solutions that provide the availability of integrated or mainstreamed settings will reflect what we know to be important for young handicapped children — that they have the opportunity to learn and interact with normally developing peers.

There are many models nationwide that currently address these and other issues. By working together, parents and providers can find the solutions that meet their local needs.

APPENDIX F:

PART I - EDUCATION OF THE HANDICAPPED ACT

PART I—EDUCATION OF THE HANDICAPPED ACT[1]

(As Amended by Public Law 98-199)

PART A—GENERAL PROVISIONS

SHORT TITLE; STATEMENT OF FINDINGS AND PURPOSE

SEC. 601. (a) This title may be cited as the "Education of the Handicapped Act".

(b) The Congress finds that—

(1) there are more than eight million handicapped children in the United States today;

(2) the special educational needs of such children are not being fully met;

(3) more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;

(4) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;

(5) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected;

(6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their residence and at their own expense;

(7) developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that, given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children;

(8) State and local educational agencies have a responsibility to provide education for all handicapped children, but present financial resources are inadequate to meet the special educational needs of handicapped children; and

(9) it is in the national interest that the Federal Government assist State and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law.

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[1] Public Law 89-750 amended the Elementary and Secondary Education Act of 1965 by adding a new title VI, effective July 1, 1971, this Act (P.L. 91-230) replaced title VI. Also as of July 1, 1971, the Education of the Handicapped Act superseded the following: P.L. 90-538, Handicapped Children's Early Education Assistance Act, P.L. 85-926, Grants for Teaching in the Education of Handicapped Children, P.L. 88-164, titles III and V of the Mental Retardation Facilities and Community Mental Centers Construction Act of 1963, and P.L. 85-905, Instructional Media for Handicapped Children.

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(c) It is the purpose of this Act to assure that all handicapped children have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.

(20 U.S.C. 1401) Enacted November 29, 1975 P.L. 94-142, sec. 3, 89 Stat. 774, 775.

DEFINITIONS

Sec. 602. (a) As used in this title—

(1) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services.

(2)[1]

(3) The term "Advisory Committee" means the National Advisory Committee on the Education of Handicapped Children.

(4) The term "construction", except where otherwise specified, means (A) erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; or (B) acquisition of existing structures not owned by any agency or institution making application for assistance under this title; or (C) remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (D) acquisition of land in connection with the activities in clauses (A), (B), and (C); or (E) a combination of any two or more of the foregoing.

(5) The term "equipment" includes machinery, utilities, and uilt-in equipment and any necessary enclosures or structures to ouse them, and includes all other items necessary for the funcioning of a particular facility as a facility for the provision of eduational services, including items such as instructional equipment nd necessary furniture, printed, published, and audio-visual intructional materials, telecommunications, sensory, and other techological aids and devices, and books, periodicals, documents, and ther related materials.

(6) The term "State" means any of the several States, the Disict of Columbia, the Commonwealth of Puerto Rico, the Virgin Isnds, Guam, American Samoa, the Northern Mariana Islands, or e Trust Territory of the Pacific Islands.

(7) The term "State educational agency" means the State board education or other agency or officer primarily responsible for the ate supervision of public elementary and secondary schools, or, if ere is no such officer or agency, an officer or agency designated the Governor or by State law.

(8) The term "local educational agency" means a public board of ucation or other public authority legally constituted within a

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P.L. 98-199, sec. 3(2), repealed this paragraph which defined the term "Commissioner". That further amended this Act by replacing all references to "Commissioner" or "Commission ' with "Secretary" or "Secretary's", respectively (97 Stat. 1358)

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State for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(9) The term "elementary school" means a day or residential school which provides elementary education, as determined under State law.

(10) The term "secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(11) The term "institution of higher education" means an educational institution in any State which—

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) is legally authorized within such State to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(D) is a public or other nonprofit institution; and

(E) is accredited by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however,* That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit such institutions, he shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions to participate under this Act and shall also determine whether particular institutions meet such standards. For the purposes of this paragraph the Secretary shall publish a list of nationally recognized accrediting agencies or associations which he determines

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to be reliable authority as to the quality of education or training offered.

(12) The term "nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(13) The term "research and related purposes" means research, research training (including the payment of stipends and allowances), surveys, or demonstrations in the field of education of handicapped children, or the dissemination of information derived therefrom, including (but without limitation) experimental schools.

(14) The term "Secretary" means the Secretary of Education.

(15) The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(16) The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(17) The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

(18) The term "free appropriate public education" means special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with the individualized education program required under section 614(a)(5).

(19) The term "individualized education program" means a writen statement for each handicapped child developed in any meeting by a representative of the local educational agency or an intermeiate educational unit who shall be qualified to provide, or superise the provision of, specially designed instruction to meet the nique needs of handicapped children, the teacher, the parents or uardian of such child, and, whenever appropriate, such child,

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which statement shall include (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

(20) The term "excess costs" means those costs which are in excess of the average annual per student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting (A) amounts received under this part or under title I or title VII of the Elementary and Secondary Education Act of 1965, and (B) any State or local funds expended for programs which would qualify for assistance under this part or under such titles.

(21) The term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act (20 U.S.C. 880b-1(a)(2)).

(22) The term "intermediate educational unit" means any public authority, other than a local educational agency, which is under the general supervision of a State educational agency, which is established by State law for the purpose of providing free public education on a regional basis, and which provides special education and related services to handicapped children within that State.

(b) For purposes of part C of this title, "handicapped youth" means any handicapped child (as defined in section 602(a)(1)) who—

(1) is twelve years of age or older; or

(2) is enrolled in the seventh or higher grade in school.

(20 U.S.C. 1401) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 602, 84 Stat. 175, amended November 29, 1975, P.L. 94-142, sec. 4(a), 89 Stat. 775, 776; amended December 2, 1983, P.L. 98-199, sec. 2, 97 Stat. 1357.

OFFICE OF SPECIAL EDUCATION PROGRAMS

SEC. 603. (a) There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs which shall be the principal agency in the Department for administering and carrying out this Act and other programs and activities concerning the education and training of the handicapped.

(b)(1) The Office established under subsection (a) shall be headed by a Deputy Assistant Secretary who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services. The position of Deputy Assistant Secretary shall be in grade GS-18 of the General Schedule under section 5104 of title 5, United States Code, and shall be a Senior Executive Service position for the purposes of section 3132(a)(2) of such title.

(2) In addition to such Deputy Assistant Secretary, there shall be established in such office not less than six positions for persons to assist the Deputy Assistant Secretary, including the position of As-

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sociate Deputy Assistant Secretary. Each such position shall be in grade GS-15 of the General Schedule under section 5104 of title 5, United States Code.

(20 U.S.C. 1402) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 603, 84 Stat. 177; amended August 21, 1974, P.L. 93-380, sec. 612(a), 88 Stat. 579, 580; amended December 2, 1983, P.L. 98-199, sec. 3(a), 97 Stat. 1359.

NATIONAL ADVISORY COMMITTEE ON THE EDUCATION OF HANDICAPPED CHILDREN AND YOUTH

SEC. 604. (a) The Secretary shall establish in the Department of Education a National Advisory Committee on the Education of Handicapped Children and Youth, consisting of fifteen members, appointed by the Secretary. Not less than five such members shall be parents of handicapped children and the remainder shall be handicapped persons (including students), persons affiliated with education, training, or research programs for the handicapped, and those having demonstrated a commitment to the education of handicapped children.

(b) The Advisory Committee shall review the administration and operation of the programs authorized by this Act and other provisions of law administered by the Secretary with respect to handicapped children (including the effect of such programs in improving the educational attainment of such children) and make recommendations for the improvement of such programs. Such recommendations shall take into consideration experience gained under this and other Federal programs for handicapped children and, to the extent appropriate, experience gained under other public and private programs for handicapped children. The Advisory Committee may make such recommendations to the Secretary as the Committee considers appropriate and shall make an annual report of its findings and recommendations to the Secretary not later than June 30 of each year. The Secretary shall transmit each such report, together with comments and recommendations, to the Congress.

(c) There are authorized to be appropriated for the purposes of this section $200,000 for fiscal year 1984, and for each of the two succeeding fiscal years.

(20 U.S.C. 1403) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 604, 84 Stat. 177; amended August 21, 1974, P.L. 93-380, sec. 613, 88 Stat. 580, amended April 21, 1976, P.L. 94-273, sec. 3(14), 90 Stat. 376, P.L. 94-273, sec. 13(2), 90 Stat. 378; amended December 2, 1983, P.L. 98-199, sec. 4, 97 Stat. 1358.

ACQUISITION OF EQUIPMENT AND CONSTRUCTION OF NECESSARY FACILITIES

SEC. 605. (a) In the case of any program authorized by this title, if the Secretary determines that such program will be improved by permitting the funds authorized for such program to be used for the acquisition of equipment and the construction of necessary facilities, he may authorize the use of such funds for such purposes.

(b) If within twenty years after the completion of any construction (except minor remodeling or alteration) for which funds have been paid pursuant to a grant or contract under this title the facility constructed ceases to be used for the purposes for which it was constructed, the United States, unless the Secretary determines that there is good cause for releasing the recipient of the funds from its obligation, shall be entitled to recover from the applicant or other owner of the facility an amount which bears the same ratio to the then value of the facility as the amount of such Federal funds bore to the cost of the portion of the facility financed with such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

(20 U.S.C. 1404) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 605, 84 Stat. 177.

EMPLOYMENT OF HANDICAPPED INDIVIDUALS

SEC. 606. The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this Act.

(20 U.S.C. 1405) Enacted November 29, 1975, P.L. 94-142, sec. 6(a), 89 Stat. 795

GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS

SEC. 607. (a) The Secretary is authorized to make grants and to enter into cooperative agreements with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment in accordance with standards promulgated under the Act approved August 12, 1968 (Public Law 90-480), relating to architectural barriers

(b) For the purposes of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

(20 U.S.C. 1406) Enacted November 29, 1975, P.L. 94-142, sec. 6(a), 89 Stat. 795, amended December 2, 1983, P.L. 98-199, sec. 5, 97 Stat. 1358

REQUIREMENTS FOR PRESCRIBING REGULATIONS

SEC. 608. (a) For purposes of complying with section 431(b) of the General Education Provisions Act with respect to regulations promulgated under part B of this Act, the thirty-day period under such section shall be ninety days.

(b) The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this Act which would procedurally or substantively lessen the protections provided to handicapped children under this Act, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at IEP meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

(c) The Secretary shall transmit a copy of any regulations promulgated under this Act to the National Advisory Committee on the Education of the Handicapped concurrently with publication in the Federal Register.

(20 U.S.C. 1407) Enacted December 2, 1983, P.L. 98-199, sec. 6, 97 Stat. 1359

PART B—ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN

SETTLEMENTS AND ALLOCATIONS

SEC. 611. (a)(1) Except as provided in paragraph (3) and in section 619, the maximum amount of the grant to which a State is entitled under this part for any fiscal year shall be equal to—

(A) the number of handicapped children aged three to twenty-one, inclusive, in such State who are receiving special education and related services;

multiplied by—

(B)(i) 5 per centum, for the fiscal year ending September 30, 1978, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(ii) 10 per centum, for the fiscal year ending September 30, 1979, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(iii) 20 per centum, for the fiscal year ending September 30, 1980, of the average per pupil expenditure in public elementary and secondary schools in the United States;

(iv) 30 per centum, for the fiscal year ending September 30, 1981, of the average per pupil expenditure in public elementary and secondary schools in the United States; and

(v) 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States;

except that no State shall receive an amount which is less than the amount which such State received under this part for the fiscal year ending September 30, 1977.

(2) For the purpose of this subsection and subsection (b) through subsection (e), the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(3) The number of handicapped children receiving special education and related services in any fiscal year shall be equal to the average of the number of such children receiving special education and related services on October 1 and February 1 of the fiscal year preceding the fiscal year for which the determination is made.

(4) For purposes of paragraph (1)(B), the term "average per pupil expenditure", in the United States, means the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for such year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for purposes of this subsection, means the fifty States and the District of Columbia), as the case may be, plus any direct expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in av-

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erage daily attendance to whom such agencies provided free public education during such preceding year.

(5)(A) In determining the allotment of each State under paragraph (1), the Secretary may not count—

(i) handicapped children in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 per centum of the number of all children aged five to seventeen, inclusive, in such State; and

(ii) handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.

(B) For purposes of subparagraph (A), the number of children aged five to seventeen, inclusive, in any State shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

(b)(1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1978—

(A) 50 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

(B) 50 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with the priorities established under section 612(3).

(2) Of the funds which any State may use under paragraph (1)(A)—

(A) an amount which is equal to the greater of—

(i) 5 per centum of the total amount of funds received under this part by such State; or

(ii) $200,000;

may be used by such State for administrative costs related to carrying out sections 612 and 613;

(B) the remainder shall be used by such State to provide support services and direct services in accordance with the priorities established under section 612(3).

(c)(1) Of the funds received under subsection (a) by any State for the fiscal year ending September 30, 1979, and for each fiscal year thereafter—

(A) 25 per centum of such funds may be used by such State in accordance with the provisions of paragraph (2); and

(B) except as provided in paragraph (3),[1] 75 per centum of such funds shall be distributed by such State pursuant to subsection (d) to local educational agencies and intermediate educational units in such State, for use in accordance with priorities established under section 612(3).

(2)(A) Subject to the provisions of subparagraph (B), of the funds which any State may use under paragraph (1)(A)—

(i) an amount which is equal to the greater of—

(I) 5 per centum of the total amount of funds received under this part by such State; or

(II) $300,000;

may be used by such State for administrative costs related to carrying out the provisions of sections 612 and 613; and

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[1] Apparent error. Should read "(B) except as provided in paragraph (4)

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(ii) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 612(3).

(B) The amount expended by any State from the funds available o such State under paragraph (1)(A) in any fiscal year for the pro- ision of support services or for the provision of direct services hall be matched on a program basis by such State, from funds ther than Federal funds, for the provision of support services or or the provision of direct services for the fiscal year involved.

(3) The provisions of section 613(a)(9) shall not apply with respect o amounts available for use by any State under paragraph (2).

(4)(A) No funds shall be distributed by any State under this sub- ection in any fiscal year to any local educational agency or inter- ediate educational unit in such State if—

(i) such local educational agency or intermediate educational unit is entitled, under subsection (d), to less than $7,500 for such fiscal year; or

(ii) such local educational agency or intermediate educational unit has not submitted an application for such funds which meets the requirements of section 614.

(B) Whenever the provisions of subparagraph (A) apply, the State volved shall use such funds to assure the provision of a free ap- opriate education to handicapped children residing in the area rved by such local educational agency or such intermediate edu- tional unit. The provisions of paragraph (2)(B) shall not apply to e use of such funds.

d) From the total amount of funds available to local educational encies and intermediate educational units in any State under section (b)(1)(B) or subsection (c)(1)(B), as the case may be, each al educational agency or intermediate educational unit shall be itled to an amount which bears the same ratio to the total ount available under subsection (b)(1)(B) or subsection (c)(1)(B), the case may be, as the number of handicapped children aged ee to twenty-one, inclusive, receiving special education and re- ed services in such local educational agency or intermediate edu- ional unit bears to the aggregate number of handicapped chil- n aged three to twenty-one, inclusive, receiving special educa- n and related services in all local educational agencies and inter- liate educational units which apply to the State educational ncy involved for funds under this part.

(1) The jurisdictions to which this subsection applies are m, American Samoa, the Virgin Islands, the Northern Mariana nds, and the Trust Territory of the Pacific Islands.

) Each jurisdiction to which this subsection applies shall be en- d to a grant for the purposes set forth in section 601(c) in an unt equal to an amount determined by the Secretary in accord- with criteria based on respective needs, except that the aggre- of the amount to which such jurisdictions are so entitled for fiscal year shall not exceed an amount equal to 1 per centum e aggregate of the amounts available to all States under this for that fiscal year. If the aggregate of the amounts, deter- d by the Secretary pursuant to the preceding sentence, to be eeded for any fiscal year exceeds an amount equal to such 1 centum limitation, the entitlement of each such jurisdiction shall be reduced proportionately until such aggregate does not exceed such 1 per centum limitation.

(3) The amount expended for administration by each jurisdiction under this subsection shall not exceed 5 per centum of the amount allotted to such jurisdiction for any fiscal year, or $35,000, whichever is greater.

(f)(1) The Secretary is authorized to make payments to the Secretary of the Interior according to the need for such assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. The amount of such payment for any fiscal year shall not exceed 1 per centum of the aggregate amounts available to all States under this part for that fiscal year.

(2) The Secretary of the Interior may receive an allotment under this subsection only after submitting to the Secretary an application which meets the applicable requirements of section 614(a) and which is approved by the Secretary. The provisions of section 616 shall apply to any such application.

(g)(1) If the sums appropriated for any fiscal year for making payments to States under this part are not sufficient to pay in full the total amounts which all States are entitled to receive under this part for such fiscal year, the maximum amounts which all States are entitled to receive under this part for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(2) In the case of any fiscal year in which the maximum amounts for which States are eligible have been reduced under the first sentence of paragraph (1), and in which additional funds have not been made available to pay in full the total of such maximum amounts under the last sentence of such paragraph, the State educational agency shall fix dates before which each local educational agency or intermediate educational unit shall report to the State educational agency on the amount of funds available to the local educational agency or intermediate educational unit, under the provisions of subsection (d), which it estimates that it will expend in accordance with the provisions of this part. The amounts so available to any local educational agency or intermediate educational unit, or any amount which would be available to any other local educational agency or intermediate educational unit if it were to submit a program meeting the requirements of this part, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies or intermediate educational units, in the manner provided by this section, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

(20 U.S.C. 1411) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 611, 84 Stat. 178; amended August 21, 1974, P.L. 93-380, sec. 614(a), 88 Stat. 580, 581, amended November 29, 1975, P.L. 94-142, sec. 5(a), 89 Stat. 776, 777, 778, 779, 780; amended June 14, 1980, P.L. 96-270, sec. 13, 94 Stat. 498; amended December 2, 1983, P.L. 98-199, sec. 15, 97 Stat. 1374.

ELIGIBILITY

SEC. 612. In order to qualify for assistance under this part in any fiscal year, a State shall demonstrate to the Secretary that the following conditions are met:

(1) The State has in effect a policy that assures all handicapped children the right to a free appropriate public education.

(2) The State has developed a plan pursuant to section 613(b) in effect prior to the date of the enactment of the Education for All Handicapped Children Act of 1975 and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that—

(A) there is established (i) a goal of providing full educational opportunity to all handicapped children, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

(B) a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

(C) all children residing in the State who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

(D) policies and procedures are established in accordance with detailed criteria prescribed under section 617(c); and

(E) the amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Commission.

(3) The State has established priorities for providing a free approriate public education to all handicapped children, which priorties shall meet the timetables set forth in clause (B) of paragraph 2) of this section, first with respect to handicapped children who re not receiving and education, and second with respect to handiapped children, within each disability, with the most severe handiaps who are receiving an inadequate education, and has made adeuate progress in meeting the timetables set forth in clause (B) of aragraph (2) of this section.

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(4) Each local educational agency in the State will maintain records of the individualized education program for each handicapped child, and such program shall be established, reviewed, and revised as provided in section 614(a)(5).

(5) The State has established (A) procedural safeguards as required by section 615, (B) procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(6) The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children with the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet educational standards of the State educational agency.

(7) The State shall assure that (A) in carrying out the requirements of this section procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 613.

(20 U.S.C. 1412) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 612, 84 Stat. 178; amended June 23, 1972, P.L. 92-318, sec. 421(b)(1)(C), 86 Stat. 341; amended August 21, 1974, P.L. 93-380, sec. 614(b)(1), 88 Stat. 582, amended November 29, 1975, P.L. 94-142, sec. 5(a), 89 Stat. 780, 781, 782.

STATE PLANS

Sec. 613. (a) Any State meeting the eligibility requirements set forth in section 612 and desiring to participate in the program under this part shall submit to the Secretary, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such plan shall—

(1) set forth policies and procedures designed to assure that funds paid to the State under this part will be expended in accordance with the provisions of this part, with particular atten-

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tion given to the provisions of sections 611(b), 611(c), 611(d), 612(2), and 612(3);

(2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241c-2), section 305(b)(8) of such Act (20 U.S.C. 844a(b)(8)) or its successor authority, and section 122(a)(4)(B) of the Vocational Education Act of 1963 (20 U.S.C. 1262(a)(4)(B)), under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all handicapped children, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs;

(3) set forth, consistent with the purposes of this Act, a description of programs and procedures for (A) the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special educational instructional and support personnel, detailed procedures to assure that all personnel necessary to carry out the purposes of this Act are appropriately and adequately prepared and trained, and effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and (B) adopting, where appropriate, promising educational practices and materials development through such projects;

(4) set forth policies and procedures to assure—

(A) that, to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services; and

(B) that (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this part) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all handicapped children within such State, and (ii) in all such instances the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under

this part for services to any child who is determined to be erroneously classified as eligible to be counted under section 611(a) or section 611(d);

(6) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

(7) provide for (A) making such reports in such form and containing such information as the Secretary may require to carry out his functions under this part, and (B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved reasonable notice and opportunity for a hearing;

(9) provide satisfactory assurance that Federal funds made available under this part (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case to supplant such State and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Secretary may waive in part the requirement of this clause if he concurs with the evidence provided by the State;

(10) provide, consistent with procedures prescribed pursuant to section 617(a)(2), satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized education programs), in accordance with such criteria that the Secretary shall prescribe pursuant to section 617; and

(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, State and local education officials, and administrators of programs for handicapped children, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of

funds under this part, and (C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of his responsibilities under section 618.

(b) Whenever a State educational agency provides free appropriate public education for handicapped children, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) as are contained in section 614(a), except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 614(a).

(c) The Secretary shall approve any State plan and any modification thereof which—

(1) is submitted by a State eligible in accordance with section 612; and

(2) meets the requirements of subsection (a) and subsection (b).

The Secretary shall disapprove any State plan which does not meet the requirements of the preceding sentence, but shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

(d)(1) If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of handicapped children enrolled in private elementary and secondary schools as required by subsection (a)(4), the Secretary shall waive such requirement, and shall arrange for the provision of service to such children through arrangements which shall be subject to the requirements of subsection (a)(4).

(2)(A) When the Secretary arranges for services pursuant to this
ubsection, the Secretary, after consultation with the appropriate
public and private school officials, shall pay to the provider of such
ervices an amount per child which may not exceed the Federal
mount provided per child under this part to all handicapped chil-
ren enrolled in the State for services for the fiscal year preceding
he fiscal year for which the determination is made.

(B) Pending final resolution of any investigation or complaint
hat could result in a determination under this subsection, the Sec-
etary may withhold from the allocation of the affected State edu-
ational agency the amount the Secretary estimates would be nec-
ssary to pay the cost of such services.

(C) Any determination by the Secretary under this section shall
ontinue in effect until the Secretary determines that there will no
nger be any failure or inability on the part of the State educa-
onal agency to meet the requirements of subsection (a)(4).

(3)(A) The Secretary shall not take any final action under this
bsection until the State educational agency affected by such
tion has had an opportunity, for at least 45 days after receiving
ritten notice thereof, to submit written objections and to appear
fore the Secretary or his designee to show cause why such action
ould not be taken.

(B) If a State educational agency is dissatisfied with the Secre-
ry's final action after a proceeding under subparagraph (A) of

this paragraph, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(20 U.S.C. 1413) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 613, 84 Stat. 179; amended August 21, 1974, P.L. 93-380, sec. 614(d), 88 Stat. 581, 582, amended November 29, 1975, P.L. 94-142, sec. 5(a), 89 Stat. 782, 783, 784; ; amended December 2, 1983, P.L. 98-199, sec. 7, 97 Stat. 1359.

APPLICATION

Sec. 614. (a) A local educational agency or an intermediate educational unit which desires to receive payments under section 611(d) for any fiscal year shall submit an application to the appropriate State educational agency. Such application shall—

(1) provide satisfactory assurance that payments under this part will be used for excess costs directly attributable to programs which—

(A) provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are handicapped, regardless of the severity of their handicap, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;

(B) establish policies and procedures in accordance with detailed criteria prescribed under section 617(c);

(C) establish a goal of providing full educational opportunities to all handicapped children, including—

(i) procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under section 613(a)(3);

(ii) the provision of, and the establishment of priorities for providing, a free appropriate public education to all handicapped children, first with respect to

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handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education;

(iii) the participation and consultation of the parents or guardian of such children; and

(iv) to the maximum extent practicable and consistent with the provisions of section 612(5)(B), the provision of special services to enable such children to participate in regular educational programs;

(D) establish a detailed timetable for accomplishing the goal described in subclause (C); and

(E) provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subclause (C);

(2) provide satisfactory assurance that (A) the control of funds provided under this part, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property, (B) Federal funds expended by local educational agencies and intermediate educational units for programs under this part (i) shall be used to pay only the excess costs directly attributable to the education of handicapped children, and (ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant such State and local funds, and (C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this part;

(3)(A) provide for furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the State educational agency to perform its duties under this part, including information relating to the educational achievement of handicapped children participating in programs carried out under this part; and

(B) provide for keeping such records, and provide for affording such access to such records, as the State educational agency may find necessary to assure the correctness and verification of such information furnished under subclause (A);

(4) provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all evaluations and reports required under clause (3) shall be public information;

(5) provide assurances that the local educational agency or intermediate educational unit will establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually;

(6) provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a); and

(7) provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of sections 612(5)(B), 612(5)(C), and 615.

(b)(1) A State educational agency shall approve any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application meets the requirements of subsection (a), except that no such application may be approved until the State plan submitted by such State educational agency under subsection (a) is approved by the Secretary under section 613(c). A State educational agency shall disapprove any application submitted by a local educational agency or an intermediate educational unit under subsection (a) if the State educational agency determines that such application does not meet the requirements of subsection (a).

(2)(A) Whenever a State educational agency, after reasonable notice and opportunity for a hearing, finds that a local educational agency or an intermediate educational unit, in the administration of an application approved by the State educational agency under paragraph (1), has failed to comply with any requirement set forth in such application, the State educational agency, after giving appropriate notice to the local educational agency or the intermediate educational unit, shall—

(i) make no further payments to such local educational agency or such intermediate educational unit under section 620 until the State educational agency is satisfied that there is no longer any failure to comply with the requirement involved; or

(ii) take such finding into account in its review of any application made by such local educational agency or such intermediate educational unit under subsection (a).

(B) The provisions of the last sentence of section 616(a) shall apply to any local educational agency or any intermediate educational unit receiving any notification from a State educational agency under this paragraph.

(3) In carrying out its functions under paragraph (1), each State educational agency shall consider any decision made pursuant to a hearing held under section 615 which is adverse to the local educational agency or intermediate educational unit involved in such decision.

(c)(1) A State educational agency may, for purposes of the consideration and approval of applications under this section, require local educational agencies to submit a consolidated application for payments if such State educational agency determines that any individual application submitted by any such local educational agency will be disapproved because such local educational agency is ineligible to receive payments because of the application of section 611(c)(4)(A)(i) or such local educational agency would be unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(2)(A) In any case in which a consolidated application of local educational agencies is approved by a State educational agency under paragraph (1), the payments which such local educational agencies may receive shall be equal to the sum of payments to which each such local educational agency would be entitled under section 611(d) if an individual application of any such local educational agency had been approved.

(B) The State educational agency shall prescribe rules and regulations with respect to consolidated applications submitted under this subsection which are consistent with the provisions of paragraph (1) through paragraph (7) of section 612 and section 613(a) and which provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

(C) In any case in which an intermediate educational unit is required pursuant to State law to carry out the provisions of this part, the joint responsibilities given to local educational agencies under subparagraph (B) shall not apply to the administration and disbursement of any payments received by such intermediate educational unit. Such responsibilities shall be carried out exclusively by such intermediate educational unit.

(d) Whenever a State educational agency determines that a local educational agency—

(1) is unable or unwilling to establish and maintain programs of free appropriate public education which meet the requirements established in subsection (a);

(2) is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain such programs; or

(3) has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of such children;

the State educational agency shall use the payments which would have been available to such local educational agency to provide special education and related services directly to handicapped children residing in the area served by such local educational agency. The State educational agency may provide such education and services in such manner, and at such locations (including regional or State centers), as it considers appropriate, except that the manner in which such education and services are provided shall be consistent with the requirements of this part.

(e) Whenever a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by such agency with State and local funds otherwise available to such agency, the State educational agency may reallocate funds (or such portion of those funds as may not be required to provide such education and services) made available to such agency, pursuant to section 611(d), to such other local educational agencies within the State as are not adequately providing special education and related services to all handicapped children residing in the areas served by such other local educational agencies.

(f) Notwithstanding the provisions of subsection (a)(2)(B)(ii), any local educational agency which is required to carry out any program for the education of handicapped children pursuant to a State law shall be entitled to receive payments under section 611(d) for use in carrying out such program, except that such payments may not be used to reduce the level of expenditures for such program made by such local educational agency from State or local funds below the level of such expenditures for the fiscal year prior to the fiscal year for which such local educational agency seeks such payments.

(20 U.S.C. 1414) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 614, 84 Stat. 181; amended November 29, 1975, P.L. 94-142, sec. 5(a), 89 Stat. 784, 785, 786, 787, 788.

PROCEDURAL SAFEGUARDS

Sec. 615. (a) Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

(b)(1) The procedures required by this section shall include, but shall not be limited to—

(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(B) procedures to protect the rights of the child whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, local educational agency, or intermediate educational unit involved in the education or care of the child) to act as a surrogate for the parents or guardian;

(C) written prior notice to the parents or guardian of the child whenever such agency or unit—

(i) proposes to initiate or change, or

(ii) refuses to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;

(D) procedures designed to assure that the notice required by clause (C) fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

(E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.

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(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

(c) If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

(d) Any party to any hearing conducted pursuant to subsections (b) and (c) shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).

(e)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

(2) Any party aggrieved by the findings and decision made under subsection (b) who does not have the right to an appeal under subsection (c), and any party aggrieved by the findings and decision under subsection (c), shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

(20 U.S.C. 1415) Enacted November 29, 1975, P.L. 94-142, sec. 5(a), 89 Stat. 788, 789.

WITHHOLDING AND JUDICIAL REVIEW

SEC. 616. (a) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2)), finds—

(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

(2) that in the administration of the State plan there is a failure to comply with any provision of this part or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan,

the Secretary (A) shall, after notifying the State educational agency, withhold any further payments to the State under this part, and (B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 613(a)(2) within his jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children. If the Secretary withholds further payments under clause (A) or clause (B) he may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or intermediate educational units affected by the failure. Until the Secretary is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in clause (1) or clause (2), no further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) within his jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children, or payments by the State educational agency under this part shall be limited to local educational agencies and intermediate educational units whose actions did not cause or were not involved in the failure, as the case may be. Any State educational agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

(b)(1) If any State is dissatisfied with the Secretary's final action with respect to its State plan submitted under section 613, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause

shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(20 U.S.C. 1416) Enacted November 29, 1975 P.L. 94-142, sec. 5(a), 89 Stat. 789, 790.

ADMINISTRATION

SEC. 617. (a)(1) In carrying out his duties under this part, the Secretary shall—

(A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of handicapped children and the execution of the provisions of this part;

(B) provide such short-term training programs and institutes as are necessary;

(C) disseminate information, and otherwise promote the education of all handicapped children within the States; and

(D) assure that each State shall, within one year after the date of the enactment of the Education for All Handicapped Children Act of 1975, provide certification of the actual number of handicapped children receiving special education and related services in each State.

(2) As soon as practicable after the date of the enactment of the Education for All Handicapped Children Act of 1975, the Secretary shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting plans under this part in order to assure equity among the States.

(b) In carrying out the provisions of this part, the Secretary (and the Secretary, in carrying out the provisions of subsection (c)) shall issue, not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

(c) The Secretary shall take appropriate action, in accordance with the provisions of section 438 of the General Education Provisions Act, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this part.

(d) The Secretary is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c) and (d) of section 618 and to carry out his duties under subsection (a)(1) of this subsection without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classifica-

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tion and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

(20 U.S.C. 1417) Enacted November 29, 1975, P.L. 94-142, sec. 5(a), 89 Stat. 791

EVALUATION

SEC. 618. (a) The Secretary shall directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, and evaluations—

(1) to assess progress in the implementation of this Act, the impact, and the effectiveness of State and local efforts to provide free appropriate public education to all handicapped children and youth; and

(2) to provide Congress with information relevant to policymaking and provide Federal, State, and local educational agencies with information relevant to program management, administration, and effectiveness with respect to such education.

(b) In carrying out the responsibilities under this section, the Secretary, on at least an annual basis, shall obtain data concerning programs and projects assisted under this Act, and under other Federal laws relating to the education of handicapped children and youth, and such additional information, from State and local educational agencies and other appropriate sources, as is necessary for the implementation of this Act including—

(1) the number of handicapped children and youth in each State receiving a free appropriate public education (special education and related services) by disability category and by age group (3-5, 6-11, 12-17, and 18-21);

(2) The number of handicapped children and youth in each State who are participating in regular educational programs, by disability category (consistent with the requirements of section 612(5)(B) and section 614(a)(1)(C)(iv)), and the number of handicapped children and youth in separate classes, separate schools or facilities, or public or private residential facilities, or who have been otherwise removed from the regular education environment.

(3) the number of handicapped children and youth exiting the educational system each year through program completion or otherwise, by disability category and age, and anticipated services for the next year.

(4) the amount of Federal, State, and local funds expended in each State specifically for special education and related services (which may be based upon a sampling of data from State agencies including State and local educational agencies);

(5) the number and type of personnel that are employed in the provision of special education and related services to handicapped children and youth by disability category served, and the estimated number and type of additional personnel by disability category needed to adequately carry out the policy established by this Act; and

(6) a description of the special education and related services needed to fully implement the Act throughout each State, including estimates of the number of handicapped children and youth within each disability by age group (3-5, 6-11, 12-17, and

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18-21) in need of improved services and the type of programs and services in need of improvement.

(c) The Secretary shall, by grant, contract, or cooperative agreement, provide for evaluation studies to determine the impact of this Act. Each such evaluation shall include recommendations for improvement of the programs under this Act. The Secretary shall, not later than July 1 of each year, submit to the appropriate committees of each House of the Congress and publish in the Federal Register proposed evaluation priorities for review and comment.

(d)(1) The Secretary is authorized to enter into cooperative agreements with State educational agencies to carry out studies to assess the impact and effectiveness of programs assisted under the Act.

(2) Such agreements shall—

(A) provide for the payment of not to exceed 60 per centum of the total cost of studies conducted by a participating State educational agency to assess the impact and effectiveness of programs assisted under the Act; and

(B) be developed in consultation with the State Advisory Panel established under this Act, the local educational agencies, and others involved in or concerned with the education of handicapped children and youth.

(3) The Secretary shall provide technical assistance to participat-
ng State educational agencies in the implementation of the study
esign, analysis, and reporting procedures.

(4) In addition, the Secretary shall disseminate information from
ıch studies to State educational agencies, and as appropriate,
thers involved in, or concerned with the education of handicapped
ıildren and youth.

(e)(1) At least one study shall be a longitudinal study of a sample
handicapped students, encompassing the full range of handicap-
ng conditions, examining their educational progress while in spe-
al education and their occupational, educational, and independent
ving status after graduating from secondary school or otherwise
aving special education.

(2) At least one study shall focus on obtaining and compiling cur-
nt information available through State educational agencies and
al educational agencies and other service providers, regarding
ate and local expenditures for educational services for handi-
pped students (including special education and related services),
d gather information needed in order to calculate a range of per
pil expenditures by handicapping condition.

f)(1) Not later than one hundred and twenty days after the close
each fiscal year, the Secretary shall publish and disseminate an
nual report on the progress being made toward the provision of a
e appropriate public education to all handicapped children and
ıth. The annual report is to be transmitted to the appropriate
nmittees of each House of Congress and the National Advisory
nmittee on the Education of Handicapped Children and Youth,
l published and disseminated in sufficient quantities to the edu-
ion community at large and to other interested parties.

2) The Secretary shall include in each annual report—

(A) an index and summary of each evaluation activity and results of studies conducted under subsection (c);

(B) a compilation and analysis of data gathered under subsection (b);

(C) a description of findings and determinations resulting from monitoring reviews of State implementation of part B of this Act;

(D) an analysis and evaluation of the participation of handicapped children and youth in vocational education programs and services;

(E) an analysis and evaluation of the effectiveness of procedures undertaken by each State educational agency, local educational agency, and intermediate educational unit to ensure that handicapped children and youth receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children and youth in day or residential facilities; and

(F) any recommendations for change in the provisions of this Act or any other Federal law providing support for the education of handicapped children and youth.

(3) In the annual report for fiscal year 1985 (published in 1986) and for every third year thereafter, the Secretary shall include in the annual report—

(A) an index of all current projects funded under parts C through F of this Act; and

(B) data reported under sections 621, 622, 623, 627, 634, 641, and 653.

(g) There are authorized to be appropriated $3,100,000 for fiscal year 1984, $3,270,000 for fiscal year 1985, and $3,440,000 for fiscal year 1986 to carry out the provisions of this section.

(20 U.S.C. 1418) Enacted November 29, 1975, P.L. 94-142, sec. 5(a), 89 Stat. 791, 792, 793; amended December 2, 1983, P.L. 98-199, sec. 8, 97 Stat. 1360.

INCENTIVE GRANTS

Sec. 619. (a) The Secretary shall make a grant to any State which—

(1) has met the eligibility requirements of section 612;

(2) has a State plan approved under section 613; and

(3) provides special education and related services to handicapped children aged three to five, inclusive, who are counted for the purposes of section 611(a)(1)(A).

The maximum amount of the grant for each fiscal year which a State may receive under this section shall be $300 for each such child in that State.

(b) Each State which—

(1) has met the eligibility requirements of section 612,

(2) has a State plan approved under section 613, and

(3) desires to receive a grant under this section.

shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

(c) The Secretary shall pay to each State having an application approved under subsection (b) of this section the amount of which the State is entitled under this section, which amount shall be used for the purpose of providing the services specified in clause (3) of subsection (a) of this section, and for providing special education and related services for handicapped children from birth to three years of age.

(d) If the sums appropriated for any fiscal year for making payments to States under this section are not sufficient to pay in full the maximum amounts which all States may receive under this part for such fiscal year, the maximum amounts which all States may receive under this part for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

(e) In addition to the sums necessary to pay the entitlements under section 611, there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

(20 U.S.C. 1419) Enacted November 29, 1975, P.L. 94-142, sec. 5 (a), 89 Stat. 793; amended December 2, 1983, P.L. 98-199, sec. 9, 97 Stat. 1363.

PAYMENTS

SEC. 620. (a) The Secretary shall make payments to each State in amounts which the State educational agency of such State is eligible to receive under this part. Any State educational agency receiving payments under this subsection shall distribute payments to the local educational agencies and intermediate educational units of such State in amounts which such agencies and units are eligible to receive under this part after the State educational agency has approved applications of such agencies or units for payments in accordance with section 614(b).

(b) Payments under this part may be made in advance or by way of reimbursement and in such installments as the Secretary may determine necessary.

(20 U.S.C. 1420) Enacted November 29, 1975, P.L. 94-142, sec. 5(a), 89 Stat. 793-94

PART C—CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF THE HANDICAPPED

REGIONAL RESOURCE CENTERS

SEC. 621. (a) The Secretary is authorized to make grants to, or to
ter into contracts or cooperative agreements with, institutions of
gher education, private nonprofit organizations, State education-
agencies, or combinations of such agencies or institutions (which
mbinations may include one or more local educational agencies)
thin particular regions of the United States, to pay all or part of
cost of the establishment and operation of regional resource
ters. Each regional resource center shall provide consultation,
hnical assistance, and training to State educational agencies and
ough such State agencies to local educational agencies. Each
ter established or operated under this section shall—

(1) assist in identifying and solving persistent problems in providing quality special education and related services for handicapped children and youth;

(2) assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to handicapped children and youth and their families;

(3) gather and disseminate information to all State educational agencies within the region and coordinate activities with other centers assisted under this section and other relevant projects conducted by the Department of Education; and

(4) assist in the improvement of information dissemination to and training activities for professionals and parents of handicapped children.

(b) In determining whether to approve an application for a project under this section, the Secretary shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to fulfill the responsibilities under subsection (a).

(c) Each regional resource center shall report a summary of materials produced or developed and this information shall be included in the annual report to Congress required under section 618.

(20 U.S.C. 1421) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 621, 84 Stat [illegible]; amended December 2, 1983, P.L. 98-199, sec. 10, 97 Stat. 1363.

SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH

SEC. 622. (a)(1) The Secretary is authorized to make grants to, or to enter into cooperative agreements or contracts with, public or nonprofit private agencies, institutions, or organizations to assist State educational agencies to—

(A) assure deaf-blind children and youth provision of special education and related services as well as vocational and transitional services; and

(B) make available to deaf-blind youth upon attaining the age of twenty-two, programs and services to facilitate their transition from educational to other services.

(2) A grant, cooperative agreement, or contract pursuant to paragraph (1)(A) may be made only for programs providing (A) technical assistance to agencies, institutions, or organizations providing educational services to deaf-blind children or youth; (B) preservice or inservice training to paraprofessionals, professionals, and related services personnel preparing to serve, or serving, deaf-blind children or youth; (C) replication of successful innovative approaches to providing educational or related services to deaf-blind children and youth; and (D) facilitation of parental involvement in the education of their deaf-blind children and youth. Such programs may include—

(i) the diagnosis and educational evaluation of children and youth at risk of being certified deaf-blind;

(ii) programs of adjustment, education, and orientation for deaf-blind children and youth; and

(iii) consultative, counseling, and training services for the families of deaf-blind children and youth.

(3) A grant, cooperative agreement, or contract pursuant to paragraph (1)(B) may be made only for programs providing (A) technical assistance to agencies, institutions, and organizations serving, or proposing to serve, deaf-blind individuals who have attained age

twenty-two years; (B) training or inservice training to paraprofessionals or professionals serving, or preparing to serve, such individuals; and (C) assistance in the development or replication of successful innovative approaches to providing rehabilitative, semisupervised, or independent living programs.

(4) In carrying out this subsection, the Secretary shall take into consideration the need for a center for deaf-blind children and youth in light of the general availability and quality of existing services for such children and youth in the part of the country involved.

(b) The Secretary is also authorized to enter into a limited number of cooperative agreements or contracts to establish and support regional programs for the provision of techincal assistance in the education of deaf-blind children and youth.

(c)(1) Programs supported under this section shall report annually to the Secretary on (A) the numbers of deaf-blind children and youth served by age, severity, and nature of deaf-blindness; (B) the number of paraprofessionals, professionals, and family members directly, served by each activity; and (C) the types of services provided.

(2) The Secretary shall examine the number of deaf-blind children and youth (A) reported under subparagraph (c)(1)(A) and by the States; (B) served by the programs under part B of this Act and subpart 2 of part B, title I, of the Elementary and Secondary Education Act of 1965 (as modified by chapter 1 of the Education Consolidation and Improvement Act of 1981); and (C) the Deaf-Blind Registry of each State. The Secretary shall revise the count of deaf-blind children and youth to reflect the most accurate count.

(3) The Secretary shall summarize these data for submission in the annual report required under section 618.

(d) The Secretary shall disseminate materials and information concerning effective practices in working with deaf-blind children and youth.

(20 U.S.C. 1422) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 622, 84 Stat. 182; amended December 2, 1983, P.L. 98-199, sec. 10, 97 Stat. 1364.

EARLY EDUCATION FOR HANDICAPPED CHILDREN

SEC. 623. (a)(1) The Secretary is authorized to arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations, for the development and operation of programs of experimental preschool and early education for handicapped children which the Secretary determines show promise of promoting a comprehensive and strengthened approach to the special problems of such children. Such programs shall include activities and services designed to (1) facilitate the intellectual, emotional, physical, mental, social, and language development of such children; (2) encourage the participation of the parents of such children in the development and operation of any such program; and (3) acquaint the community to be served by any such program with the problems and potentialities of such children.

(2) Programs authorized by this subsection shall be coordinated with similar programs in the schools operated or supported by State or local educational agencies of the community to be served.

(3) As much as is feasible, such programs shall be geographically dispersed throughout the Nation in urban as well as rural areas.

(4) No arrangement pursuant to this subsection shall provide for the payment of more than 90 per centum of the total annual costs of development, operation, and evaluation of any program. Non-Federal contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services.

(5) For purposes of this subsection the term "handicapped children" includes children from birth through eight years of age.

(b)(1) Subject to paragraph (2), the Secretary is authorized to make a grant to each State through the State educational agency or other State agency to assist such State agency in planning, developing, and implementing a comprehensive delivery system for the provision of special education and related services to handicapped children from birth through five years of age.

(2) The Secretary shall make one of the following types of grants (authorized under paragraph (1)) to any State which submits an application which meets the requirements of this subsection:

(A) PLANNING GRANT.—A grant for a maximum of two years for the purpose of assessing needs within the State and establishing a procedure and design for the development of a State plan which includes parent participation and training of professionals and others.

(B) DEVELOPMENT GRANT.—A grant for a maximum of three years for the purpose of developing a comprehensive State plan, and gaining approval of this plan from the State Board of Education, The Commissioner of Education, or other designated official of the appropriate State agency.

(C) IMPLEMENTATION GRANT.—A grant for a maximum of three years for the purpose of implementing and evaluating the comprehensive State plan. A State must apply for annual renewal of such grant.

(3) Each State educational agency or other State agency desiring to receive a grant under this subsection shall submit an application at such time, in such manner, and accompanied by such information as the Secretary considers necessary. Each such application shall contain assurances and evidence that:

(A) The State agency receiving the grant will coordinate with other appropriate State agencies (including the State educational agency) in carrying out the grant.

(B) The State plan will address the special education and related service needs of all handicapped children from birth through five years of age with special emphasis on children who are often not identified and children who are not now served.

(C) The State plan will be closely coordinated with child-find efforts under section 612(2)(C) and with preschool incentive grant activites under section 619 of this Act.

(4) The Secretary shall include in the annual report under section 618 of this Act the following:

(A) The States and State agencies receiving grants under this subsection and the types of grants received.

(B) A description of the activities in each State being undertaken through grants under this subsection.

(C) Beginning in 1986, in consultation with the National Council for the Handicapped and the National Advisory Committee on the Education of Handicapped Children and Youth, a description of the status of special education and related services to handicapped children from birth through five years of age (including those receiving services through Head Start, Developmental Disabilities Program, Crippled Children's Services, Mental Health/Mental Retardation Agency, and State child-development centers and private agencies under contract with local schools).

(c)(1) Not less than 30 per centum of the funds made available in any year for the purposes of this section may be used for purposes of subsection (b).

(2) Not less than 10 per centum of the funds made available in any year for the purposes of subsection (b) shall be available for the provision of training and technical assistance of States preparing to receive or receiving grants under this section.

(20 U.S.C. 1423) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 623, 84 Stat. 183; amended December 2, 1983, P.L. 98-199, sec. 10, 97 Stat. 1365.

RESEARCH, INNOVATION, TRAINING, AND DISSEMINATION ACTIVITIES IN CONNECTION WITH CENTERS AND SERVICES FOR THE HANDICAPPED

Sec. 624. (a) The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with such organizations or institutions, as are determined by the Secretary to be appropriate, consistent with the purposes of this part, for—

(1) research to identify and meet the full range of special needs of handicapped children and youth;

(2) the development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of handicapped children and youth;

(3) training of personnel for programs specifically designed for handicapped children; and

(4) dissemination of materials and information about practices found effective in working with such children and youth.

(b) In making grants and contracts under this section, the Secretary shall ensure that the activities funded under such grants and contracts will be coordinated with similar activities funded from grants and contracts under other sections of this Act.

(c) In carrying out the provisions of this section the Secretary is authorized to address the needs of the severely handicapped.

(20 U.S.C. 1424) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 624, 84 Stat. 183, amended December 2, 1983, P.L. 98-199, sec. 10, 97 Stat. 1366.

POSTSECONDARY EDUCATION PROGRAMS

Sec. 625. (a)(1) The Secretary is authorized to make grants to or to enter into contracts with State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for handicapped individuals.

(2) In making grants or contracts on a competitive basis under this section, the Secretary shall give priority consideration to the four regional centers for the deaf and to model programs for individuals with handicapping conditions other than deafness—

(A) for developing and adapting programs of postsecondary, vocational, technical, continuing, or adult education to meet the special needs of handicapped individuals; and

(B) for programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers.

(3) Of the sums made available for programs under this section, not less than $2,000,000 shall first be available for the four regional centers for the deaf.

(b) For the purposes of this section the term "handicapped individuals" means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired individuals with specific learning disabilities who by reason thereof require special education and related services.

(20 U.S.C. 1424a) Enacted August 21, 1974, P.L. 93-380, sec. 616, 88 Stat. 584; amended December 2, 1983, P.L. 98-199, sec. 10, 97 Stat. 1367.

SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH

SEC. 626. (a) The Secretary is authorized to make grants to, or enter into contracts with, institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (Public Law 97-300)) to—

(1) strengthen and coordinate education, training, and related services for handicapped youth to assist in the transitional process to postsecondary education, vocational training, competitive employment, continuing education, or adult services; and

(2) stimulate the improvement and development of programs for secondary special education.

(b) Projects assisted under this section may include—

(1) developing strategies and techniques for transition to independent living, vocational training, postsecondary education, and competitive employment for handicapped youth;

(2) establishing demonstration models for services and programs which emphasize vocational training, transitional services, and placement for handicapped youth;

(3) conducting demographic studies which provide information on the numbers, age levels, types of handicapping conditions, and services required for handicapped youth in need of transitional programs;

(4) specially designed vocational programs to increase the potential for competitive employment for handicapped youth;

(5) research and development projects for exemplary service delivery models and the replication and dissemination of successful models;

(6) initiating cooperative models between educational agencies and adult service agencies, including vocational rehabilitation, mental health, mental retardation, public employment, and employers, which facilitate the planning and developing of transitional services for handicapped youth to postsecondary education, vocational training, employment, continuing education, and adult services; and

(7) developing appropriate procedures for evaluating vocational training, placement, and transitional services for handicapped youth.

(c) For purposes of subsections (b)(1) and (b)(2), if an applicant is not an educational agency, such applicant shall coordinate with the State educational agency.

(d) Projects funded under this section shall to the extent appropriate provide for the direct participation of handicapped students and the parents of handicapped students in the planning, development, and implementation of such projects.

(e) The Secretary, as appropriate, shall coordinate programs described under this section with projects developed under section 311 of the Rehabilitation Act of 1973.

(20 U.S.C. 1425) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 625, 84 Stat. 183; renumbered August 21, 1974, P.L. 93-380, sec. 616, 88 Stat. 584; amended December 2, 1983, P.L. 98-199, sec. 10, 97 Stat. 1367.

PROGRAM EVALUATIONS

SEC. 627. The Secretary shall conduct, either directly or by contract, a thorough and continuing evaluation of the effectiveness of each program assisted under this part. Results of the evaluations shall be analyzed and submitted to the appropriate committees of each House of Congress together with the annual report under section 618.

(20 U.S.C. 1426) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 626, 84 Stat. 184; renumbered and amended August 21, 1974, P.L. 93-380, sec. 616 and 617, 88 Stat. 584; amended June 17, 1977, P.L. 95-49, sec. 2, 91 Stat. 230; amended December 2, 1983, P.L. 98-199, sec. 10, 97 Stat. 1368.

AUTHORIZATION OF APPROPRIATIONS

SEC. 628. (a) There are authorized to be appropriated to carry out he provisions of section 621, $5,700,000 for the fiscal year 1984, $6,000,000 for fiscal year 1985, and $6,300,000 for fiscal year 1986.

(b) There are authorized to be appropriated to carry out the provisions of section 622, $15,000,000 or fiscal year 1984, and for each of the two succeeding fiscal years.

(c) There are authorized to be appropriated to carry out the provisions of section 623, $26,000,000 or fiscal year 1984, $27,100,000 or fiscal year 1985, and $28,300,000 for fiscal year 1986.

(d) There are authorized to be appropriated to carry out the proisions of subsection (c) of section 624, $5,000,000 for fiscal year 984, $5,300,000 for fiscal year 1985, and $5,600,000 for fiscal year 986.

(e) There are authorized to be appropriated to carry out the proisions of section 625, $5,000,000 for fiscal year 1984, $5,300,000 for scal year 1985, and $5,500,000 for fiscal year 1986.

(f) There are authorized to be appropriated to carry out the provisions of section 626, $6,000,000 for fiscal year 1984, $6,330,000 for fiscal year 1985, and $6,660,000 for fiscal year 1986.

(20 U.S.C. 1427) Enacted December 2, 1983, P.L. 98-199, sec. 10, 97 Stat. 1368

PART D—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

GRANTS FOR PERSONNEL TRAINING

SEC. 631. (a)(1) The Secretary is authorized to make grants, which may include scholarships with necessary stipends and allowances, to institutions of higher education (including the university-affiliated facilities program under the Rehabilitation Act of 1973 and the satellite network of the developmental disabilities program) and other appropriate nonprofit agencies to assist them in training personnel for careers in special education including—

(A) special education teaching, including speech, language, and hearing impaired, and adaptive physical education;

(B) related services to handicapped children and youth in educational settings;

(C) special education supervision and administration;

(D) special education research; and

(E) training of special education personnel and other personnel providing special services.

(2) The Secretary shall ensure that grants awarded to applicant institutions and agencies under this subsection meet State and professionally recognized standards for the training of special education and related services personnel.

(3) Grants under this subsection may be used by such institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Secretary.

(4) The Secretary in carrying out the purposes of this subsection may reserve a sum not to exceed 5 per centum of the amount available for this subsection in each fiscal year for contracts to prepare personnel in areas where shortages exist, when a response to that need has not been adequately addressed by the grant process.

(b) The Secretary is authorized to make grants to institutions of higher education and other appropriate nonprofit agencies to conduct special projects to develop and demonstrate new approaches for the preservice training purposes set forth in subsection (a), for regular educators, and for the inservice training of special education personnel, including classroom aides, related services personnel, and regular education personnel who serve handicapped children.

(c)(1) The Secretary is authorized to make grants through a separate competition to private nonprofit organizations for the purpose of providing training and information to parents of handicapped children and volunteers who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of handicapped children. Such grants shall be designed to meet the unique training and information needs of parents of handicapped children, including those who are members of groups that have been traditionally underrepresented, living in the area to be served by the grant.

(2) In order to receive a grant under this subsection a private nonprofit organization shall—

(A) be governed by a board of directors on which a majority of the members are parents of handicapped children and which includes members who are professionals in the field of special education and related services who serve handicapped children and youth; or if the nonprofit private organization does not have such a board, such organization shall have a membership which represents the interests of individuals with handicapping conditions, and shall establish a special governing committee on which a majority of the members are parents of handicapped children and which includes members who are professionals in the fields of special education and related services, to operate the training and information program under this subsection;

(B) serve the parents of children with the full range of handicapping conditions under such grant program; and

(C) demonstrate the capacity and expertise to conduct effectively the training and information activities authorized under this subsection.

(3) The board of directors or special governing committee of a private nonprofit organization receiving a grant under this subsection shall meet at least once in each calendar quarter to review such parent training and information activities, and each such committee shall advise the governing board directly of its views and recommendations. Whenever a private nonprofit organization requests the renewal of a grant under this subsection, the board of directors or the special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

(4) The Secretary shall ensure that grants under this subsection will—

(A) be distributed geographically to the greatest extent possible throughout all the States; and

(B) be targeted to parents of handicapped children in both urban and rural areas, or on a State, or regional basis.

(5) Parent training and information programs assisted under the subsection shall assist parents to—

(A) better understand the nature and needs of the handicapping conditions of their child;

(B) provide followup support for their handicapped child's educational programs;

(C) communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(D) participate in educational decisionmaking processes including the development of their handicapped child's individualized educational program;

(E) obtain information about the programs, services, and resources available to their handicapped child, and the degree to which the programs, services, and resources are appropriate; and

(F) understand the provisions for the education of handicapped children as specified under part B of this Act.

(6) Each private nonprofit organization operating a program receiving assistance under this subsection shall consult with appropriate agencies which serve or assist handicapped children and youth and are located in the jurisdictions served by the program.

(7) The Secretary shall provide technical assistance, by grant or contract, for establishing, developing, and coordinating parent training and information programs.

(20 U.S.C. 1431) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 631, 84 Stat. 184; amended December 2, 1983, P.L. 98-199, sec. 11, 97 Stat. 1369.

GRANTS TO STATE EDUCATIONAL AGENCIES FOR TRAINEESHIPS

SEC. 632. The Secretary shall make grants to State educational agencies to assist them in establishing and maintaining, directly or through grants to institutions of higher education, programs for the preservice and inservice training of teachers of handicapped children, or supervisors of such teachers.

(20 U.S.C. 1432) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 632, 84 Stat. 184; amended December 2, 1983, P.L. 98-199, sec. 11, 97 Stat. 1371.

GRANTS TO IMPROVE RECRUITMENT OF EDUCATIONAL PERSONNEL AND DISSEMINATION OF INFORMATION CONCERNING EDUCATIONAL OPPORTUNITIES FOR THE HANDICAPPED

SEC. 633. (a) The Secretary is authorized to make a grant to or enter into a contract with a public agency or a nonprofit private organization or institution for a national clearinghouse on the education of the handicapped and to make grants or contracts with a public agency or a nonprofit private organization or institution for other support projects which may be deemed necessary by the Secretary to achieve the following objectives:

(1) to disseminate information and provide technical assistance on a national basis to parents, professionals, and other interested parties concerning—

(A) programs relating to the education of the handicapped under this Act and and under other Federal laws; and

(B) participation in such programs, including referral of individuals to appropriate national, State, and local agencies and organizations for further assistance;

(2) to encourage students and professional personnel to seek and obtain careers and employment in the various fields relating to the education of handicapped children and youth; and

(3) to provide information on available services and programs in postsecondary education for the handicapped.

(b) In addition to the clearinghouse established under subsection (a), the Secretary shall make a grant or enter into a contract for a national clearinghouse on postsecondary education for handicapped individuals for the purpose of providing information on available services and programs in postsecondary education for the handicapped.

(c)(1) In awarding the grants and contracts under this section, the Secretary shall give particular attention to any demonstrated experience at the national level relevant to performance of the functions established in the section, and ability to conduct such projects, communicate with the intended consumers of information, and maintain the necessary communication with other agencies and organizations.

(2) The Secretary is authorized to make contracts with profitmaking organizations under this section only when necessary for materials or media access.

(20 U.S.C. 1433) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 633, 84 Stat. 184; amended December 2, 1983, P.L. 98-199, sec. 11, 97 Stat. 1371.

REPORTS TO THE SECRETARY

SEC. 634. (a) Not more than sixty days after the end of any fiscal year, each recipient of a grant or contract under this part during such fiscal year shall prepare and submit a report to the Secretary. Each such report shall be in such form and detail as the Secretary determines to be appropriate, and shall include—

(1) the number of individuals trained under the grant or contract, by category of training and level of training; and

(2) the number of individuals trained under the grant or contract receiving degrees and certification, by category and level of training.

(b) A summary of the date required by this section shall be included in the annual report of the Secretary under section 618 of this Act.

(20 U.S.C. 1434) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 634, 84 Stat. 185; amended December 2, 1983, P.L. 98-199, sec. 11, 97 Stat. 1372.

AUTHORIZATION OF APPROPRIATIONS

SEC. 635. (a) There are authorized to be appropriated to carry out the provisions of this part (other than section 633) $58,000,000 for fiscal year 1984, $61,150,000 for fiscal year 1985, and $64,370,000 for fiscal year 1986. There are authorized to be appropriated to carry out the provisions of section 633, $1,000,000 for fiscal year 1984, $1,050,000 for fiscal year 1985, and $1,110,000 for fiscal year 1986.

(b) Of the funds appropriated pursuant to subsection (a) for any fiscal year, the Secretary shall reserve 10 per centum for activities under section 631(c).

(20 U.S.C. 1435) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 635, 84 Stat. 185; amended December 2, 1983, P.L. 98-199, sec. 11, 97 Stat. 1372.

PART E—RESEARCH IN THE EDUCATION OF THE HANDICAPPED

RESEARCH AND DEMONSTRATION PROJECTS IN EDUCATION OF HANDICAPPED CHILDREN

SEC. 641. (a) The Secretary is authorized to make grants to, or nter into contracts or cooperative agreements with, State and ocal educational agencies, institutions of higher education, and ther public agencies and nonprofit private organizations for reearch and related activities, to assist special education personnel, elated services personnel, and other appropriate persons, includng parents, in improving the education and related services for andicapped children and youth and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth. Research and related activities shall be designed to increase knowledge and understanding of handicapping conditions and teaching, learning, and education-related practices and services for handicapped children and youth. Research and related activities assisted under this section shall include, but not be limited to, the following:

(1) The development of new and improved techniques and devices for teaching handicapped children and youth.

(2) The development of curricula which meet the unique educational needs of handicapped children and youth.

(3) The application of new technologies and knowledge for the purpose of improving the instruction of handicapped children and youth.

(4) The development of program models and exemplary practices in areas of special education.

(5) The dissemination of information on research and related activities conducted under this part to interested individuals and organizations.

(b) In carrying out this section the Secretary shall consider the special education experience of the applicant and the ability of the applicant to disseminate the findings of any grant or contract.

(c) The Secretary shall publish proposed research priorities in the Federal Register every two years, not later than July 1, and shall allow a period of sixty days for public comments and suggestions. After analyzing and considering the public comments, the Secretary shall publish final research priorities in the Federal Register not later than thirty days after the close of the comment period.

(d) The Secretary shall provide an index (including the title of each research project and the name and address of the researching organization) of all research projects conducted in the prior fiscal year in the annual report described under section 618. The Secretary shall make reports of research projects available to the education community at large and to other interested parties.

(e) The Secretary shall coordinate the research priorities established under this section with research priorities established by the National Institute of Handicapped Research and shall provide information concerning research priorities established under this section to the National Council on the Handicapped and to the National Advisory Committee on the Education of Handicapped Children.

(20 U.S.C. 1441) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 641, 84 Stat. 185; amended June 17, 1977, P.L. 95-49, sec. 4, 91 Stat. 230; amended December 2, 1983, P.L. 98-199, sec. 12, 97 Stat. 1372.

RESEARCH AND DEMONSTRATION PROJECTS IN PHYSICAL EDUCATION AND RECREATION FOR HANDICAPPED CHILDREN

Sec. 642. The Secretary is authorized to make grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related purposes relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

(20 U.S.C. 1442) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 642, 84 Stat. 185; amended December 2, 1983, P.L. 98-199, sec. 12, 97 Stat. 1373.

PANELS OF EXPERTS

SEC. 643. The Secretary shall from time to time appoint panels of experts who are competent to evaluate various types of proposals for projects under parts C, D, E, and F, and shall secure the advice and recommendations of one such panel before making any grant or contract under parts C, D, E, and F of this Act. The panels shall be composed of—

(1) individuals from the field of special education for the handicapped and other relevant disciplines who have significant expertise and experience in the content areas and age levels addressed in the proposals; and

(2) handicapped individuals and parents of handicapped individuals when appropriate.

(20 U.S.C. 1443) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 643, 84 Stat. 185; amended December 2, 1983, P.L. 98-199, sec. 12, 97 Stat. 1373.

AUTHORIZATION OF APPROPRIATIONS

SEC. 644. For purposes of carrying out this part, there are authorized to be appropriated $20,000,000 for fiscal year 1984, $21,100,000 for fiscal year 1985, and $22,200,000 for fiscal year 1986.

(20 U.S.C. 1444) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 644, 84 Stat. 186; amended August 21, 1974, P.L. 93-380, sec. 619, 88 Stat. 585; amended June 17, 1977, P.L. 95-49, sec. 5, 91 Stat. 231; amended December 2, 1983, P.L. 98-199, sec. 12, 97 Stat. 1374.

PART F—INSTRUCTIONAL MEDIA FOR THE HANDICAPPED

PURPOSE

SEC. 651. (a) The purposes of this part are to promote—

(1) the general welfare of deaf persons by (A) bringing to such persons understanding and appreciation of those films which play such an important part in the general and cultural advancement of hearing persons, (B) providing through these films enriched educational and cultural experiences through which deaf persons can be brought into better touch with the realities of their environment, and (C) providing a wholesome and rewarding experience which deaf persons may share together; and

(2) the educational advancement of handicapped persons by (A) carrying on research in the use of educational media for the handicapped, (B) producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of the handicapped, and (C) training persons in the use of educational media for the instruction of the handicapped.

(20 U.S.C. 1451) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 651, 84 Stat. 186

CAPTIONED FILMS AND EDUCATIONAL MEDIA FOR HANDICAPPED PERSONS

SEC. 652. (a) The Secretary shall establish a loan service of captioned films and educational media for the purpose of making such materials available in the United States for nonprofit purposes to handicapped persons, parents of handicapped persons, and other persons directly involved in activities for the advancement of the handicapped in accordance with regulations.

(b) The Secretary is authorized to—

(1) acquire films (or rights thereto) and other educational media by purchase, lease, or gift;

(2) acquire by lease or purchase equipment necessary to the administration of this part;

(3) provide, by grant or contract, for the captioning of films;

(4) provide, by grant or contract, for the distribution of captioned films and other educational media and equipment through State schools for the handicapped and such other agencies as the Secretary may deem appropriate to serve as local or regional centers for such distribution;

(5) provide, by grant or contract, for the conduct of research in the use of educational and training films and other educational media for the handicapped, for the production and distribution of educational and training films and other educational media for the handicapped and the training of persons in the use of such films and media, including the payment to those persons of such stipends (including allowances for travel and other expenses of such persons and their dependents) as he may determine, which shall be consistent with prevailing practices under comparable federally supported programs;

(6) utilize the facilities and services of other governmental agencies; and

(7) accept gifts, contributions, and voluntary and uncompensated services of individuals and organizations.

(20 U.S.C. 1452) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 652, 84 Stat. 186; amended August 21, 1974, P.L. 93-380, sec. 620, 88 Stat. 685; amended October 12, 1976, P.L. 94-482, Title V, Part A, Sec. 501(h), 90 Stat. 2237.

CENTERS ON EDUCATIONAL MEDIA AND MATERIALS FOR THE HANDICAPPED

SEC. 653. (a) The Secretary is authorized to enter into agreements with institutions of higher education, State and local educational agencies, or other appropriate nonprofit agencies, for the establishment and operation of centers on educational media and material for the handicapped, which together will provide a comprehensive program of activities to facilitate the use of new educational technology in education programs for handicapped persons, including designing, developing, and adapting instructional materials, and such other activities consistent with the purposes of this part as the Secretary may prescribe in such agreements. Any such agreement shall—

(1) provide that Federal funds paid to a center will be used solely for such purposes as are set forth in the agreement; and

(2) authorize the center involved, subject to prior approval by the Secretary, to contract with public and private agencies and organizations for demonstration projects.

(b) In considering proposals to enter into agreements under this section, the Secretary shall give preference to institutions and agencies—

(1) which have demonstrated the capabilities necessary for the development and evaluation of educational media for the handicapped; and

(2) which can serve the educational technology needs of the Model High School for the Deaf (established under Public Law 89-694).

(c) The Secretary shall make an annual report on activities carried out under this section which shall be transmitted to the Congress.

(20 U.S.C. 1453) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 653, 84 Stat. 187, amended November 29, 1975, P.L. 94-142, sec. 6 (b), 89 Stat. 795.

AUTHORIZATION OF APPROPRIATIONS

SEC. 654. For the purposes of carrying out this part, there are authorized to be appropriated $19,000,000 for fiscal year 1984, $20,000,000 for fiscal year 1985, and $21,100,000 for fiscal year 1986.

(20 U.S.C. 1454) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 654, 84 Stat. 187; amended August 21, 1974, P.L. 93-380, sec. 620(2), 88 Stat. 585; amended June 17, 1977, P.L. 95-49, sec. 6, 91 Stat. 231; amended December 2, 1983, P.L. 98-199, sec. 13, 97 Stat. 1374.

APPENDIX G:

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